SUPREME COURT OF THE UNITED STATES.

No. 70.

JOHN BUCHANNON AND AL., APP'TS.,

vs.

EDWIN UPSHAW.

AN APPEAL FROM THE CIRCUIT COURT U. S. FOR OHIO.

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S. D. Langtree, Print.

PLEAS begun and held at the court house, in the city of Columbus, on Monday, the twenty-first day of December, being the third Monday in the same month, in the year of our Lord one thousand eight hundred and forty, and of the American independence the sixty-fifth, before the Honorable John McLean and Humphry H. Leavitt, Judges of the Circuit Court of the United States, within and for the Seventh Circuit and District of Ohio.

Among other, were the following proceedings, to wit:

JOHN BUCHANNON, et al., *Complainants*,
vs.
EDWIN UPSHAW, *Respondents*. } In Chancery.

Be it remembered, that heretofore, to wit, at the December term of the Circuit Court of the United States, within and for the Seventh Circuit and District of Ohio, begun and held at the court house, in the town of Columbus, on Monday, the nineteenth day of December, anno Domini, one thousand eight hundred and thirty-one; and afterwards in said term, to wit, Wednesday, December, twenty-first, came the complainants, by Richard Collins, their solicitor, and filed their bill in chancery, praying, among other things, that the defendant be enjoined from carrying into effect his said judgment at law, in said bill set forth, until the matters of said bill be heard in equity, &c., which bill is in the words and figures following, to wit:

Bill.

To the Honourable the Judges of the Circuit Court of the United States in and for the 7th Circuit and District of Ohio.

Humbly complaining, your orators, John Buchannon, Andrew Buchannon, John McWilliams, John Camarer, David Wood, Samuel Buchannon, John Fisher, David Fisher, Henry Fisher and Daniel Fisher, citizens of and residents in the State and District of Ohio, humbly complaining, sheweth unto your honors, that, on the day of , a certain Beverly Roy, being entitled for services in the Virginia line, on continental establishment, in the revolutionary war, to and possessed of a warrant authorising him to locate 4000 acres of land within the district set apart to the officers and soldiers of said line, did cause an entry to be made of one thousand acres in part of said warrant known by No. ; and on the 7th day of December, 1787, caused a survey of said 1000 be executed; a plat and certificate of said survey was duly recorded in the office of principal surveyor of the lands aforesaid, which 1000 acres

ofland is situated in Clermont county, State of Ohio, and is bounded and described by metes and bounds as follows, to wit, beginning at 2 ashes and a hoopwood, north corner of John Campbell's survey, No. 866, running south 45, west 500 poles, crossing a branch at 286 poles, to a white oak, hickory and poplar, west corner William Smith's survey, No. ; thence north 45, west 320 poles, to a sugar-tree and two ashes; thence north 45, east 500 poles, crossing a branch at 312 poles, to a sugar-tree and two dog-woods; thence south 45°, east 320 poles to the beginning, lying on the waters of the Ohio river. Your orator further charges that the said Beverly Roy, having obtained a patent or grant of said land from the Governor of the State of Virginia, on the day of , for a valuable consideration, sold to one William Buchannon, three hundred acres of said 1000 acres survey, and conveyed the same to him; and in said conveyance described said three hundred acres by metes and bounds, as will herein after more fully appear; and after having made said sale to said Buchannon, the said Beverly Roy, for a valuable consideration to him in hand paid, sold the residue of said one thousand acres survey to one Lyne Shackelford; and the said Lyne Shackelford entered into a contract with one Edwin Upshaw for the sale to him, the said Upshaw, of said seven hundred acres of land, and also of other lands in the western country; and the said Upshaw having given his notes to said Shackelford for the price or consideration of said lands, the said Shackelford, at the instance of said Upshaw, directed said Roy to convey said seven hundred acres of land aforesaid to said Upshaw; and afterward, to wit, on the 20th day of July, 1797, the said Beverly Roy executed a deed of conveyance to said Upshaw for the said seven hundred acres of land so sold by him to said Shackelford, and by said Shackelford to Upshaw, to which deed, or an authenticated copy thereof, your orators refer*s* and pray*es* the same to be received and considered as part thereof, being exhibit A. Your orators further charge*s* that the said Edwin Upshaw, and the said Lyne Shackelford, were both citizens of and residents in the State of Virginia, and the said Shackelford being about to visit the western country, to wit, the State of Kentucky, and the then territory northwest of the Ohio river, in the year 1797, the said Upshaw authorized him, the said Shackelford, to sell the said seven hundred acres of land for him, the said Upshaw, and in his own name to convey or contract for a conveyance; that the said Shackelford afterwards, to wit, on the 16th day of November, 1797, by virtue of authority given him by said Upshaw, and pretending to be the owner of said 700 acres of land purchased of said Beverly Roy by him, entered into a contract with one Philip Buckner, in the words and figures following, to wit, "article of agreement made and entered into this, the sixteenth day of Nov'r, in the year one thousand seven hundred and ninety-seven, between Lyne Shackelford, of the county of King and Queen, &c;" reference being had to the said article, or an authenticated copy thereof exhibited herewith, the

same will fully appear; which reference is here made, and the same prayed to be taken and considered as a part of this bill, being exhibit B.

Your orator charges, that the said Shackelford did, by said contract, sell to said Buckner, the said tract of seven hundred acres of land, and also another tract of one thousand acres of land, as a sale in gross, for the sum of one thousand and twenty pounds to be paid by said Buckner, as follows: He was to assign to said Shackelford, Richard C. Anderson's bond for six hundred and seventy-three pounds six shillings and two pence, and to assign a claim on one Coats, in Virginia, for three hundred pounds; and the said Shackelford was, by said agreement, to wait for so much of £1020, as should be the amount of Coats' bond, until judgment could be obtained thereon; and if the money due from Coats could not be obtained, then the said Buckner was to pay the amount thereof, and for the balance of said £1020, after deducting Anderson's and Coats' bonds, the said Shackelford agreed to wait until the said Buckner should have sold the one thousand seven hundred acres of land, which orders *was* given and assignments were then made by said Buckner to L. Shackelford. All which, amongst other things, appear, from said articles herein before referred to as part of this bill. And your orators, John Buchannon and Andrew Buchannon, further charge, that after the said purchase by said Buckner of said Shackelford, the said Buckner, by virtue of the authority vested in him, to sell said land, by the contract with Shackelford, and pretending to be the owner thereof, to wit, on the day of , 1798, entered into a contract with one Alexander Buchannon, the father of your orators, for the sale to him of two hundred and one acres of the said 700 acre tract, for the sum of four hundred dollars, which was paid to said Buckner by said Buchannon, and possession of the said land was delivered by said Buckner to him; and he, the said Buchannon, believing the title to the same to be good, and that Buckner was authorized to sell and convey, he commenced and continued making lasting and valuable improvements thereon, and so continued in possession until the 31st day of January, 1801, the said Buckner executed to him a deed for said land, in which the same is described by metes and bounds, as follows, to wit:

Beginning 83 poles from the S. E. corner of the original survey, in the old line, running N., 45 W., from three ashes, the beginning; thence N., 45 W., with the original line, 155 poles, to an elm and 2 lynns, S. E. corner to Camarer's survey; thence N., 49° 55′ east, 212 poles, to an ash and white oak and dogwood, S. 45° E., 152 poles, to a sugar-tree, elm and beech; thence a straight line to the beginning; which deed conveying said land in fee simple your orators said ancestor, is herewith exhibited, and prayed to be taken and considered as a part hereof. Your orators further charge, that afterwards, to wit: on the day of 1803, the said

Alexander Buchannon departed this life, having made and published his last will and testament, which has been in due form of law proved and recorded, in the County Clermont aforesaid; in which will the said testator devised the said land, so conveyed to him by said Buckner, to your orators in fee simple; reference being had to an authenticated copy of said will and probate, herewith exhibited, the same will more fully and large appear. Your orators, after the death of said testator, took possession of said land, and have ever since remained in possession, improving and cultivating the same as their own, believing they were the owners thereof.

Your orator, John McWilliams, charges, that the said Philip Bucknor, also, in like manner, and under the authority of his purchase of Shackelford, and pretending to be the true owner of said seven hundred acres of land, sold another portion thereof, to wit: one hundred and eight acres, to one James Buchannon, for the sum of two hundred and six dollars, the full value thereof, at that time, which sale was made about the day 1798; and the said James took immediate possession of said land, under the direction of said Bucknor, and commenced and continued making lasting and valuable improvements thereon, until the 30th day of January, 1801; having fully paid the price and consideration of said land, to said Bucknor, he the said Bucknor, executed to him a deed for the said land of that date, conveying the same in fee simple, in which deed the said 108 acres of land is particularly described, by metes and bounds, as follows, to wit: beginning at the N. W. corner of the original survey, two dogwoods and sugar-tree; thence with the old line, S. 45 E., 90 poles to an elm, sassafras and cherry, in said line; thence S. 46° 15′, west, 188 poles, to three sugar-trees, 45 W., 95 poles, to two ashes, and dogwood, in the old line; thence with the old, north 45° E., one hundred and eghty-two poles to the beginning; reference being had to said deed, the same will more fully appear, which reference is here made and the same prayed to be taken and considered as a part hereof.

Your orator further charges, that the same James Buchannon remained in peacable possession of said land until the 29th day of June, 1804, when he, for a valuable consideration to him paid, by one George Augerstien, to wit, the sum of six hundred dollars, sold the said one hundred and eight acres of land, and conveyed the same by deed of that date, to him, and delivered the possession of said land, to said Augerstien, who remained in possession thereof, useing and improving the same as his own, and believing his title indisputable, until the 9th day of January, 1817; he sold the said land to your orator for a valuable consideration, to wit, for the sum of fourteen hundred dollars, and conveyed the same to your orator, by deed of that date in fee simple, and delivered the possession of said land to your orator, who has ever since occupied the same, believing his title to be indisputable; your orator herewith exhibits and prays to be taken as a part of this bill, the said

deed from Buchannon to Augerstien, and the said deed from Augerstien to your orator.

Your orator, John Camarer, charges that the said Philip Buckner, after his said purchase of Shackelford, pretending to be the owner of said land, sold to your orator a part of said 700 acre survey, to wit, one hundred and fifty-one acres, for the sum of two hundred and forty dollars, which sale was made on the day of 1799, and possession of said land was immediately given by said Buckner to your orator, who commenced improving the same by clearing fields, building houses, &c. &c.; and afterwards, to wit, on the 31st of January, 1801, your orator having fully paid for said land to said Buckner, he the said Buckner, by a deed duly executed of that date, conveyed the same to your orator in fee simple, in which deed the said land is bounded and described as follows: beginning at the north-east corner of Alexander Buchannon's survey, a white oak, ash and dogwood, N. 45 W., 122 poles, to two white oaks and a dogwood, in the old line, S., 45° W., with the old line, 190 poles to a beech and two ashes, the original corner; thence with the old line, S., 45° E., 105 poles, to two lynns and elm, No. 49, 112 poles to the beginning; which deed is herewith exhibited, and prayed to be taken, and considered as a part of this bill; and your orator has ever since remained in possession of said land, making large, lasting, and valuable improvements thereon, and paying all taxes due the government thereon.

Your orator, David Wood, charges, that after the said Philip Buckner had made the purchase aforesaid, of said Shackelford, to wit, day of 1799, he, pretending to be the owner of said land, sold to your orator a part of said 700 acre tract, to wit, fifty-three acres and twenty poles, for the sum of dollars, and having received the full value and price of said land, on the 24th day of June, 1801, conveyed the same in fee simple to your orator, in which deed the said land is bounded and described, as follows: beginning at three beeches in the south line of the original survey; thence south 50° W., two hundred and twelve poles, to a poplar, hickory and white oak; thence *north*, north, 45°, west, 40 poles, to a white oak and sugar-tree; thence north, 50°, east two hundred and thirteen poles, to two blue ashes, and elm in the east line of Ford's survey; thence with said line to the beginning, reference being had to said deed, herewith exhibited, and prayed to be taken and considered as part hereof, the same will more fully appear. Your orator further charges, that he, from the time of his purchase as aforesaid, has remained in peacible possession of said land, improving the same, believing his title to be indisputable, paying all taxes due thereon. Your orator, Samuel Buchannon, sheweth unto your honors, that after the said sale by Shackelford to Buckner, as aforesaid, the said Buckner being so authorized to sell said land, and pretending to be vested with the legal title thereto, did on the day of 1799, as your orator believes, sell

to one Alexander Buchannon, Jun., the father of your orator, one hundred acres of land, part of the said seven hundred acre tract, and put him in possession thereof, and he immediately commenced making lasting improvements thereon, and so remained until the 31st day of January, 1801; he having paid to said Buckner the full price and value of said land, the said Buckner by deed of that date, conveyed the same land to said Alexander Buchannon, Jun., in fee simple, by metes and bounds, as follows: Beginning at two sugar-trees in the old line, and with Williams' line, S. 42° 15 W., 182 poles, to two ashes and a sassafras, N. 45° W., 97 poles, to James Buchannon's corner, three sugar-trees; thence with said James' line N. 46° 15 E., 182 poles, to an elm, sassafras and cherry, in the old line; thence with the said line S. 45° E., 79 poles to the beginning, reference being had to said deed, or an authenticated copy thereof, herewith exhibited as part of this bill, the same will more fully amongst other things appear.

Your orator further charges, that the said Alexander Buchannon, Jr., having so received a deed for said land, continued improving the same by building fences, &c., until the year when he departed this life intestate, leaving your orator, his only child and heir at law, to whom descended all the interest owned by said Alexander Buchannon, Jr., in said land. And your orator has, ever since the death of his said ancestor, held the possession of the same, cultivating the same, and paying the taxes due the government thereon, believing his title to be indisputably good.

Your orators, John Fisher, Jacob Fisher, David Fisher, Henry Fisher and Daniel Fisher, respectfully charges and shew unto your honours, that after the said sale by Shackleford to Buckner, to wit, on the day of 1799, the said Buckner being then authorised to sell, pretended to be the owner of said land, and that he had a good title thereto, did sell to a certain Adam Fisher, one hundred and fifty-five acres of land, being part of the said tract of seven hundred acres, for a valuable consideration, to wit, the sum of two hundred and ninety-one dollars, and put the said Adam in possession thereof; and afterwards, to wit, on the 31st day of January, 1801, the said Buckner having received the full price agreed to be paid by said Fisher, conveyed the said land to him in fee simple, by deed of that date, by metes and bounds as follows: beginning at the N. W. corner of John Camarer's survey, at 2 white oaks and dogwood in the old line, thence S. 45° E., one hundred and ninety-four poles, to a white oak and walnut; thence N. 42° 16′ E., 128 poles, to two ashes and a sassafras; thence N. 45° W., 192 poles to an ash and dogwood in the old line; thence S. 45° W., 128 poles, to the beginning; reference being had to said deed, herewith exhibited, and prayed to be taken and considered as a part of this bill, the same will more fully appear.

Your orator further charges, that said Adam Fisher remained in the peacible possession of said land, making very valuable improve-

ments thereon, believing the land was his, and his title good, until the year 1826, when he departed this life, having made his last will and testament, in which he appointed your orators, John Fisher and Jacob Fisher, his executors, and amongst other things in said will, devised and directed, that the land aforesaid should be rented, and the rent annually paid to his wife, Susanna Fisher, and at her death should be sold by your orators, said executors, and the proceeds thereof equally divided amongst his children, your orators, Jacob Fisher and John Fisher, Henry Fisher, David Fisher and Daniel Fisher; and charged the said land, with a legacy of twenty dollars, to Peggy Miller, which will was duly proved and recorded in the county of Clermont, and an authenticated copy thereof herewith exhibited, is referred to and prayed to be taken and considered as a part of this bill.

And your orators charges, that since the death of said Adam, the said executors have, in discharge of their duties as executors, taken possession of said lands, and now remain in possession of the same.

Your orators pray, that the said Edwin Upshaw, who is a resident in and citizen of the State of Virginia, may be made a defendant to this their bill of complaint.

Your orators further charge, that after the execution of the article of agreement between the said Shackelford and Buckner as aforesaid, the said Lyne Shackelford paid to said Buckner, £73 6s. 2d., mentioned in the agreement to be paid him out of Anderson's bond, and which fully appears from an indorsement and receipt for the same on the said article, which is also referred to as a part hereof; and afterwards, to wit, on the 16th day of May, 1803, after your orators, the purchasers under Buckner, had bought and took possession of these lands and made lasting improvements thereon, the said Shackelford, by an endorsement on the back of said bond, assigned to the defendant, Edwin Upshaw, all the interest he had in said bond or article of agreement, which indorsement and ass't is in the words and figures following: "1803, May 16th, I assign and transfer all my right and interest in and to the within contract to Edwin Upshaw, and authorise him to receive, from the within named Philip Buckner, the balance on the same, amounting this day to five hundred and thirty pounds, nine shillings.

LYNE SHACKELFORD.

Teste :

JOHN ROAN."

Your orators further charge, that the said Lyne Shackelford, on the 7th day of May, 1803, delivered to said Edwin Upshaw, the papers he received from said Buckner, assigning the claim on Coats as aforesaid, and for which said Upshaw executed a receipt and contract in the words and figures following:

"Received the 7th May, 1803, of Lyne Shackelford, the following

papers: an order drawn by Philip Buckner upon Charles Copeland, directing him to pay to said Shackelford the amount of Reuben Coats' bond to said Buckner, when received; a patent for one thousand acres of land to William Chamberlayne, dated 6th January, 1802, signed by Thomas Jefferson, President of the United States; the land entered and surveyed in the name of Javin Miller; a deed from William Chamberlayne to Philip Buckner for the above one thousand acres of land; John Marshall's receipt for a bond due from Reuben Coats to Philip Buckner; all which are to be delivered to said Buckner.

EDWIN UPSHAW.

Teste :

JOHN ROANE."

Your orators further charge, that at the time of the assignment of the contract made with Buckner as aforesaid, to said defendant, Upshaw, by said Shackelford, to wit, on the 16th day of May, 1803, a final settlement was had and made by and between the said Upshaw and said Shackelford, relative to their previous contract relative to said 700 acres of land, and another tract of 1000 acres also sold to said Upshaw by Shackelford, at which time and in which settlement, the said Edwin Upshaw fully approved of and confirmed the sale so as aforesaid made to said Buckner by said Shackelford, and executed to Shackelford a note or sealed bill for four hundred pounds, due him on settlement, and also, a writing obligatory in the words and figures following, to wit:

"I acknowledge to have received of Lyne Shackelford, full satisfaction for a contract heretofore entered into between him and myself, for the sale of one thousand acres of land lying upon creek, on the waters thereof, in Kentucky, surveyed in the name of Javin Miller, and seven hundred acres in the North-Western Territory, in the State of Ohio, surveyed in the name of Beverly Roy; he, the said Shackelford, having with my consent sold the said seven hundred acres of land, surveyed in the name of Beverly Roy, to Philip Buckner of Kentucky, and he having assigned to me the contract therefor with said Buckner, and authorised me to receive from said Buckner the money due from him for the same; and I hereby agree, upon the receiving the money due from said Buckner, to convey to him the said seven hundred acres of land, the same having been heretofore conveyed to me by Beverly Roy, at the request of said Shackelford.

Witness my hand and seal, this 16th day of May, 1803.

EDWIN UPSHAW. [L. S.]

Teste:

JOHN ROANE."

Reference being had to the said receipt and writing obligatory, a copy of each of which is herewith exhibited, the same will fully

appear, which reference is here made, and the same prayed to be taken and considered as a part thereof, being exhibit C and D.

Your orators further charges, that having been in possession of the lands aforesaid near thirty years, and having purchased from a respectable and at that time wealthy man, they had never suspected a defect in their title, and knew nothing of the particulars herein charged relative to the several contracts between Roy and Shackelford, Shackelford and Upshaw, and Shackelford and Buckner, until since the commencement of the ejectment hereinafter mentioned; and the said Buckner and Shackelford being long since dead, and their papers scattered, your orators have had much difficulty to develope the matters and find the papers aforesaid. And your orators now find, that the said Edwin Upshaw had no legal title to enable him to convey to Buckner, and demand the money, (if he had not received it,) until the year 1826, as hereinafter set forth.

Your orators further charges, that said Philip Buckner was, at the time of said purchase of Shackelford, and sale to your orators, in affluent circumstances, well able to pay the claim of said Shackelford or Upshaw, his assignee, the debt due for the lands sold as aforesaid, and so remained for many years afterwards, if due diligence or any diligence had been used to coerce the payment thereof; that the said Upshaw, some time in the year 1804, appointed John Horace Upshaw, his attorney, amongst other things to collect whatever was due from Buckner as aforesaid, (if any thing was due,) and said John Horace Upshaw, having, in the power given by said Edwin Upshaw, the power of substitution, appointed one John O'Bannon, a citizen of Kentucky, an agent to collect the same; and the said O'Bannon, afterwards, to wit, on the 10th and 18th April, 1806, received from said Buckner, two hundred dollars on account of said contract, as will fully appear, reference being had to two several receipts signed by said John O'Bannon, on the back of said article of agreement; which payments your orators charges were made on account of the am't due from said Buckner on said contract, after deducting the am't of Coats' bond and Anderson's bond.

Your orators further charges that the said E. Upshaw, the defendant, although he well knew that said Buckner had sold said tract of 700 acres of land, and that the same was occupied by persons improving the same, sat quiet by, without ever intimating or giving any notice that he had or pretended to have any claim, title or lien whatsoever, to said land, and waited until the year 1814, before he ever pretended to use any means to coerce the payment of the money from Buckner, when he commenced a suit in the Circuit Court of the United States for the District of Kentucky, upon the article of agreement assigned to him by Shackelford as aforesaid, against said Buckner, which suit was prosecuted until the term of said court, of May, 1815; the same cause was heard

and determined in favor of said Buckner, as will fully appear by reference to the authenticated transcript of the proceedings and judgment of said court in said cause, which is herewith exhibited, and prayed to be taken and considered as part hereof.

Your orators further charge, that the said defendant, Upshaw, never commenced any further or other suit at law against said Buckner, or used any diligence to collect the money due from Buckner, if any was due, which your orators deny, although the said Buckner was still solvent in his circumstances, well able to pay the money claimed, and said Buckner was also, as your orators is informed, well able to prove that he had complied in all respects with his contracts, and that said Shackelford and Upshaw had, by their negligence, lost the claim on Coats, if it was lost, and had thereby lost and forfeited their recourse on said Buckner; nor did he, the said Upshaw, ever set up any claim to the land sold to any, by Buckner, as aforesaid, until long after the said Shackelford had departed this life; and also, after the Buckner had departed this life, and his estate had become insolvent, to wit, in the year 1826, the said defendant, Upshaw, then combining and confederating with divers others, to your orators at present unknown, (but when discovered, he prays may be made co-defendants hereto, with the said Edwin Upshaw,) how to injure your orators, and defeat their title to said land, obtained a plat and certificate of the survey of said 1000 acres of land, in the name of said Roy, No. , and presented the same with the deed aforesaid, executed by said Roy to him, on the day of , 1797, as aforesaid, to the commissioner of the General Land Office of the United States, and upon that plat and certificate and deed, which evidenced his claim to said land derived from Roy, the original proprietor of the warrant and location, he fraudulently obtained a patent from the President of the United States, for the said 1000 acres of land, excluding the 300 acres sold by Roy to William Buchannon, which 300 acres are described by metes and bounds in said patent, all which will fully appear, reference being had to an authenticated copy of said patent, herewith exhibited, and to William Buchannon, the patent bearing date 24th October, 1826, which patent is prayed to be taken and considered as a part hereof.

Your orators charge further, that the said defendant, Upshaw, having thus fraudulently obtained the legal title to said land, of this recent date, to wit, October 24th, 1826, and believing that by the death of said Buckner and said Shackelford, all evidence was lost of the full and complete equity of your orators, the purchasers of Buckner, in said land, and right to a legal title, and that your orators, the persons in possession, could not avail themselves of the provisions of the statute of limitation, although they had been in actual occupancy of the land near thirty years, making valuable improvements thereon, believing they were the owners thereof, having fully paid for the same, and received deeds for the same,

from the ostensible owners thereof, he, the said defandant, Upshaw, has commenced an action of ejectment against your orators jointly, in the Circuit Court of the United States, to turn your orators out of possession of said land, and at the last term of this honorable court, recovered a judg't at law in the said action of ejectment, against your orators, and threatens to carry the same into execution. All which actings and doings of the said defendant, Upshaw, (and his confederates,) are contrary to equity and good conscience, and tend manifestly to the injury and oppression of your orators, who *is* completely remediless in the premises, by the strict rules of the common law, and can only find relief by the aid and interposition of this honorable court, where matters of fraud, trust and accident, and of this sort, are properly and peculiarly cognizable.

To the end, therefore, that the said defendant, Upshaw, (and his confederates, when discovered,) may be compelled upon oath to answer all and singular the matters and things stated herein, and that, as fully and particularly as if the same were herein again especially repeated in form of interrogatories; and particularly that the said def't, Edwin Upshaw, may answer and say,

1st. Did he not purchase the said 700 acres of land of Lyne Shackelford, and also another tract of 1000 acres?

2d. Did he pay him for the same; if so, how much, and when?

3. Had not the said Lyne Shackelford purchased the said land before that time, of Beverly Roy?

Did not the said Roy execute the deed to said def't, dated 20th July, 1797, at the instance of said Shackelford?

6. Did not said Shackelford sell the said land to said Bucknor, as herein before stated, under the authority of said deft.?

Did not the said Lyne Shackelford assign to said def't, the contract made with Buckner, as herein charged?

Did he not deliver the order on Copeland for Coats' claim given him by Buckner, to said def't; and did not the said defendant execute the receipt herein set forth, dated 7th May, 1803; and did he not execute the contract also herein set forth, dated May 16th, 1803?

Did he, the said def't, authorise John Horace Upshaw to collect any money of Buckner, due on said contract, as herein stated?

Did not said John H. Upshaw appoint John O'Bannon to collect the same, and were not the two sums of one hundred dollars each, paid said O'Bannon, as herein stated?

Did he use any other diligence to collect the money of Buckner, until 1814?

Did he not then have or cause a suit to be commenced against said Buckner, in the United States Court for the District of Kentucky, as herein charged; and is the record of the same, herewith exhibited, not the record of *only* the proceedings ever instituted

or prosecuted against said Buckner, by said def't, on account of said sale?

Did he ever return to said Buckner, in his life time, the order he received from Shackelford on Copeland, the attorney prosecuting the claim against Coats, mentioned in the contract with Buckner, and in the receipt af'sd, dated May 7th, 1803?

Did he, the defendant, not know that Buckner had sold the land purchased of Shackelford afor'd, and when did he receive that information? did he not obtain a patent in his own name for said 700 acres of land, at the time and in the manner aforesaid; and has he not commenced a suit at law and obtained judg't as aforesaid, against the purchasers under Buckner, to turn them out of possession of said land?

Did he nct execute to said Shackelford a note for four hundred pounds, the sum found due said Shackelford, upon the settlement aforesaid, when Buckner's contract was ass'd to him?

Did he ever set up any claim to said 700 acres of land, during the life time of Buckner, or until the year 1826?

Did he ever, before he obtained a patent as aforesaid, or since, pay any taxes due the State of Ohio, on said land?

Did he ever receive any money on the claim on Coats; if not, what diligence was used to obtain it?

Did he ever give notice to Buckner, of the failure of Coats to pay (if he did not pay;) if so, when?

May it please your honors, the matters considered, that the defendant, Edwin Upshaw, may, by a decree of this honorable court, be compelled to convey by deed in fee simple, to your orators, their several portions of land in this bill mentioned, in such manner and time, and upon such terms, and with such covenants, as to your honors may seem meet, and your orators from the equity of their case may be entitled. And that the said defendant may be enjoined from carrying into effect his said judgment at law against your orators, until the matter of this bill may be heard in equity, and that the said judgment be perpetually enjoined; and grant to your orators such other and further relief in the premises, as to your honors may seem meet, and your orators may be entitled to, and grant, that the United States writs of injunction and subpœna may issue, &c., directed, &c. And as in duty, &c., your orators will ever pray, &c.

RICHARD COLLINS,
Solicitor for Compl'ts.

THE STATE OF KENTUCKY,
Mason County, ss.

Personally came before me, the undersigned, a justice of the peace in and for said county, John Buchannon, one of the complainants named in the foregoing bill in chancery, and being

sworn saith, that the matters stated in the foregoing bill, so far as stated in the same as of his own knowledge, are true; and as far as stated from the information of others, he believes the same to be true.

JOHN BUCHANNON.

Sworn to and subscribed before , this 20th day of October, 1831.
J. BROWN,
J. P. M. C.

Exhibits, referred to in the foregoing bill.—A.

Deed from Roy, to Upshaw.

This indenture, made the twentieth day of July, in the year of our Lord one thousand seven hundred and ninety-seven, between Beverly Roy, of the county of King and Queen, of the one part, and Edwin Upshaw, of the county of Essex, of the other part, witnesseth: that the said Beverly Roy, for and in consideration of the sum of three hundred and fifty pounds, current money of Virginia, by the said Edwin Upshaw to him in hand paid, the receipt whereof is hereby aknowledged, hath granted, bargained, sold, and by these presents doth grant, bargain and sell unto the said Edwin Upshaw, his heirs and assigns, a certain tract or parcel of land, containing seven hundred acres, being the residue of one thousand acres, after deducting three hundred acres sold out of the said thousand acres to William Buchannon, of the county of Mason, in the State of Kentucky, which said tract of land is situate and lying in the Territory northwest of the river Ohio, and was granted to the said Beverly Roy by the Commonwealth of Virginia, by patent bearing date the eleventh day of December, one thousand seven hundred and eighty-nine; and bounded as follows, to wit: beginning at two ashes, hoop wood, north corner, to John Campbell's survey No. 866, running south, forty-five degrees west, five hundred poles, crossing a branch at two hundred and eighty-six poles to a white oak, hickory and popular, west corner, to William Smith's survey No. 866; thence north, five degrees west, three hundred and twenty poles, to a sugar tree and two ashes; thence north, forty-five degrees east, five hundred poles, crossing a branch at three hundred and twelve poles, to a sugar tree and two dogwoods; thence south, forty-five degrees east, three hundred and twenty poles, to the beginning; together with all and singular the appurtenances thereto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits, and of every part and parcel thereof: to have and to hold the said seven hundred acres of land, with all and singular its appurtenances unto the said Edwin Upshaw, his heirs and assigns, forever. And the said Beverly Roy, for

himself and his heirs, this said tract of land with its appurtenances, unto the said Edwin Upshaw, his heirs and assigns, free from the claim or claims of him, the said Beverly Roy, and his heirs, and all and every other person or persons whatever, shall, will and do warrant and forever defend, by these presents.

In witness whereof, the said Beverly Roy hath hereunto set his hand and seal, the day and year first above written.

BEVERLY ROY. [L. S.]

Sealed and delivered in the presence of
PHIL. TALIAFERRO,
WM. DUDLEY,
JNO. TRUNKS.

COMMONWEALTH OF VIRGINIA,
King & Queen County, to wit:

This day Beverly Roy personally appeared before us, Philip Taliaferro and William Dudley, two of the Commonwealth's justices of the peace for the county aforesaid, and acknowledged the within indenture to be his act and deed. Given under our hands, the twentieth day of July, 1797.

PHIL. TALIAFERRO,
W. DUDLEY.

VIRGINIA, *King & Queen County, to wit:*

I, Robert Pollard, clerk of the court of said county of King & Queen, do hereby certify, that Philip Taliaferro and William Dudley, gentlemen, at the time of sealing the above certificate, were and now are justices of the peace for this Commonwealth, in the county aforesaid, to which certificate due credit ought to be given.

In testimony whereof, I have hereunto set my hand and [L. S.] affixed the seal of the said county, this 21st day of July, 1797, in the 22d year of the Commonwealth.

ROBERT POLLARD.

RECORDER'S OFFICE, *Hamilton County, Ohio, ss.*

I certify the above to be a true copy of a deed of conveyance from Beverly Roy to Edwin Upshaw, as appears of record in this office, in book C. No. 1, page 83, recorded 9th April, 1799.

In testimony whereof, I have hereunto subscribed my [L. S.] name and affixed my seal of office, at Cincinnati, in said county, this eleventh day of January, A. D. one thousand eight hundred and thirty.

GRIFFIN YEATMAN,
R. H. C. O.

Exhibit B.

B.—Agreement, Shackelford and Buckner.

Articles of agreement, made and entered into the sixteenth day of November, in the year one thousand seven hundred and ninety-seven, between Lyne Shackelford, of the county of King and Queen, in the State of Virginia, of one part, and Philip Buckner, of the county of Bracken, in the State of Kentucky, of the other part, witnesseth: that for and in consideration of the sum of one thousand and twenty pounds, current money of Virginia, to be paid by the said Philip Buckner to the said Lyne Shackelford, as hereinafter expressed, he, the said Lyne Shackelford, hath bargained and sold unto the said Philip Buckner one thousand acres of military land, No. 1,080, surveyed for Javin Miller, in the district set apart for the officers and soldiers of the Virginia line of the late continental army, on the north-west side of the Ohio river; beginning at a gum and two small ashes, east corner to Alexander Parker's survey, No. 834, and south corner to Benjamin Moseley's survey No. 1,102, running with Moseley's line, N. 45 E., 500 poles, to a walnut, lynn and mulberry, east corner to Moseley; thence S. 45 E., 320 poles, to three ashes; thence S. 45 W., 500 poles, to a walnut and cherry; thence N. 45 W., 320 poles, to the beginning; and also seven hundred acres of military land, lying in the same district, being part of a thousand acres, No. 1,064, surveyed for Beverly Roy; three hundred acres of which one thousand acres, have been heretofore sold to William Buchannon; and the said Philip Buckner, on his part, agrees to pay the said one thousand and twenty pounds as follows: he is to assign to the said Shackelford, Richard C. Anderson's bond for six hundred and seventy-three pounds six shillings and two pence, due the first day of January next, out of which the said Shackelford is to repay to the said Buckner seventy-three pounds six shillings and two pence.

And whereas, the said Philip Buckner hath lately directed a suit to be commenced in the Federal Court, held in the city of Richmond, in Virginia, upon a bond due from Reuben Coats to said Buckner, for the sum of three hundred pounds, with a credit endorsed of fifty pounds; the said Shackelford agrees to wait for so much of the said one thousand and twenty pounds, as shall be the amount of said Coats' bond, until judgment can be obtained thereon, upon the said Buckner's giving an order in writing directing the attorney, prosecuting the suit, to pay the amount of the judgment, when recovered to the said Shackelford; but if the money due upon the said bond cannot be obtained from the said Coats, then the said Buckner is to pay the amount thereof to the said Shackelford, and for the balance of the one thousand and twenty pounds, before mentioned, after deducting the six hundred pounds to be paid in Richard C. Anderson's bond, and the amount of Reuben Coats'

bond, the said Shackelford agrees to wait until the said Buckner shall have sold the one thousand seven hundred acres of land, hereinbefore mentioned, provided such sale shall be made before the first day of January, 1799, at which time the said Buckner is to pay the said balance to the said Shackelford, unless the land shall be sold sooner; and if it is, the said balance is to be payable whenever such sale is made; and the said Shackelford, on his part, doth further agree, that he will procure a patent for the said one thousand acres of land hereinbefore mentioned, and that he will convey, or cause to be legally conveyed, the said one thousand acres of land, and seven hundred acres of land, unto the said Philip Buckner, his heirs and assigns, forever, free from the claim or claims of all and every other person or persons whatsoever.

In witness whereof, the said Lyne Shackelford and Philip Buckner have hereunto set their hands and seals, the day and year above written.

LYNE SHACKELFORD, [L. S.]
PHILIP BUCKNER. [L. S.]

Sealed and delivered in the presence of
NATH'L PATTERSON,
DICK'N MORRIS,
WILLIS HORD.

Rec'd the 16th of Nov., 1797, of Lyne Shackelford, seventy-three pounds six shillings and two pence, mentioned in the foregoing agreement, to be repaid out of Richard C. Anderson's bond.

PHILIP BUCKNER.
Test: WILLIS HORD.

1803, *May 16th.*

I assign and transfer all my right and interest in and to the within contract, to Edwin Upshaw, and authorise him to receive, from the within named Philip Buckner, the balance due upon the same, amounting this day to five hundred and thirty pounds nine shillings.

LYNE SHACKELFORD.
Test: JOHN ROANE.

April 10th, 1805.

Rec'd of P. Buckner $100, part of the within, as per receipt of same date.

J. O. B.

April 18th, 1806.

Received of Philip Buckner $100, in part of the within, as per receipt of this date.

J. O. B.

A Copy—Test: JOHN H. HANNA,
C. C. C. K. D.

Exhibit C.

C.—Receipt—Upshaw to Shackelford.

Rec'd the 7th May, 1803, of Lyne Shackelford, the following papers: An order drawn by Philip Buckner upon Charles Copland, directing him to pay to said Shackelford, the am't of Reuben Coats' bond to said Buckner, when recovered. A patent for one thousand acres of land to Wm. Chamberlayne, dated 6th Jan'y, 1802, signed by Thos. Jefferson, President of the United States; the land entered and surveyed in the name of Javin Miller. A deed from Wm. Chamberlayne to Philip Buckner, for the above one thousand acres of land. John Marshall's receipt for a bond due from Reuben Coats to Philip Buckner; all of which are to be delivered to said Buckner.

(Signed) EDWIN UPSHAW.
Test—Signed, JOHN ROANE.

I do hereby certify, that Edwin Upshaw either signed his name to a paper, of which the above is a copy, in my presence, or acknowledged his name to the same in my presence, which of the two I do not now certainly recollect; and that I signed my name as a witness thereto.

Witness my hand, this 21st day of April, 1807.

JOHN ROANE.

June 16th, 1807.

This day shewed this to Mr. Edwin Upshaw, who agreed that it should be of equal validity with the original in his injunction ag't Wm. Chamberlayne, he having examined it with the original.

JAMES WEBB.

STATE OF VIRGINIA, *Essex County.*

Court Office, 27th Oct., 1830.

I, William B. Matthews, clerk of said court, do hereby certify that the foregoing is a true and exact copy of a paper filed in a suit in chancery, lately depending in said court, wherein Edwin Upshaw was plaintiff, and William Chamberlayne defendant.

In testimony whereof, I have hereunto set my hand, as clerk of said court.

W. B. MATTHEWS.

Exhibit D.

D.—Receipt and contract—Upshaw to Shackelford.

I acknowledge to have received of Lyne Shackleford, full satisfaction for a contract heretofore entered into between him and

myself, for the sale of one thousand acres of land, lying upon Poages Creek, (or the waters thereof,) in Kentucky, surveyed in the name of Javin Miller; and seven hundred acres in the north-western territory or State of Ohio, surveyed in the name of Beverly Roy; he, the said Shackelford, having, with my consent, sold the said seven hundred acres of land, surveyed in the name of Beverly Roy to Philip Buckner, of Kentucky, and he having assigned to me the contract therefor, with said Buckner, and authorised me to receive from said Buckner the said money due from him for the same; and I hereby agree, upon the receiving the money from said Buckner, to convey to him the said seven hundred acres of land, the same having been heretofore conveyed to me by Beverly Roy at the request of said Shackelford.

Witness my hand and seal the seventeenth day of May, 1803.

(Signed) EDWIN UPSHAW. [L. S.]

Test—(Signed) JOHN ROANE.

I do hereby certify, that Edwin Upshaw signed his name to a paper, of which what is written on the other side is a copy, in my presence, or acknowledged his name signed to the same, in my presence, which of the two I do not now certainly recollect; and that I signed my name as a witness thereto.

Witness my hand, this 21st day of April, 1807.

JOHN ROANE.

June 16th, 1807.

This day shewed this to Mr. Edwin Upshaw, who agreed that it should be of equal validity with the original in his inj'n. ag't Wm. Chamberlayne, which he examined.

J. WEBB.

STATE OF VIRGINIA, *Essex County.*

Court Office, October 27th, 1830.

I, William B. Matthews, clerk of said court, do hereby certify that the foregoing is a true and exact copy of a paper filed in a suit in chancery, lately depending in said court, wherein Edwin Upshaw was plaintiff, and William Chamberlayne defendant.

In testimony whereof, I have hereunto set my hand, as clerk of said court.

WM. B. MATTHEWS.

Transcript—Upshaw & Buckner.

UNITED STATES OF AMERICA, *sct.*

Pleas before the Honorable Thomas Todd, Judge of the Seventh Circuit Court of the United States of America, in and for the District of Kentucky, at the capitol, in the town of Frankfort, at the May term, 1815, and in the 39th year of our Independence.

Be it remembered, that heretofore, to wit, on the 26th day of February, in the year of our Lord 1814, Edwin Upshaw, a citizen of the State of Virginia, sued out of the clerk's office of the court aforesaid, a writ of capias ad respondendum, against Philip Buckner, a citizen of the State of Kentucky, in these words and figures, to wit:

"The United States of America, to the marshal of the Dis-
[L. S.] trict of Kentucky, greeting:

You are hereby commanded to take Philip Buckner, a citizen of the State of Kentucky, if he be found within your bailiwick, and him safely keep, so that you have his body before the judges of our seventh Circuit Court of the United States of America, in and for the District of Kentucky, at the capitol in Frankfort, on the first Monday in May next, to answer Edwin Upshaw, a citizen of the State of Virginia, assignee of Lyne Shackelford, of an action of covenant broken, damage three thousand dollars, and have then there this writ.

In testimony whereof, John Marshall, Esq., chief justice of the said United States, hath caused the seal of our said
[L. S.] court to be hereunto affixed, this 26 day of February, A. D. 1814, and in the 38th year of our Independence.

Atteste: JOHN H. HANNA,
C. C. C. K. D.

Endorsed: "Memo.

This is an action of covenant broken, and no bail is required.
ADAMS, *P. Q.*

Returned, "executed on the 14th March, 1841.
FRANCIS H. WATKINS,
Dep. for Robert Crockett, M. K. D.
Travelled 65 miles and two ferriages."

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of February, in the year 1815, (until which time this cause was continued,) came the plaintiff aforesaid, by his atto., and then and there filed his declaration herein, which decl'n is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
7th Circuit, District of Ken'ky, sct.

Edwin Upshaw, a citizen of the State of Virginia, ass'ee of Lyne Shackelford, complains of Philip Buckner, a citizen of the State of Kentucky, in custody, &c., of a plea of covenant broken, for

that whereas, on the 16th day of November, in the year 1797, within the circuit and district aforesaid, the said Philip Buckner and Lyne Shackelford entered into certain articles of agreement, signed and sealed with their own proper hands and seals, the date whereof is the day and year aforesaid, and which to the court is now here shewn, in the words and figures following, to wit:

Articles of agreement made and entered into the 16th day of November, in the year one thousand seven hundred and ninety-seven, between Lyne Shackelford, of the county of King and Queen, in the State of Virginia, of the one part, and Philip Buckner, of the county of Bracken, in the State of Kentucky, of the other part:

Witnesseth, that for and in consideration of the sum of one thousand and twenty pounds current money of Virginia, to be paid by the said Philip Buckner to the said Lyne Shackelford, as hereinafter expressed, he, the said Lyne Shackelford, hath bargained and sold unto the said Philip Buckner, one thousand acres of military land, No. 1080, surveyed for Javin Miller, in the district set apart for the officers and soldiers of the Virginia line of the late continental army, on the north-west side of the Ohio river, beginning at a gum and two small oaks, east corner to Alexander Parker's survey, No. 834, and south corner to Benjamin Mosly's survey, No. 1102, running with Mosly's line S. 45 E., 320 poles, to three ashes; thence S. 45 W., 500 poles, to a walnut and cherry tree; thence N. 45 W., 320 poles, to the beginning; and also, seven hundred acres of military land, lying in the same district, being part of one thousand acres, No. 1064, surveyed for Beverly Roy, three hundred acres of which one thousand acres have been heretofore sold to William Buchannon; and the said Philip Buckner on his part agrees to pay the one thousand and twenty pounds, as follows: He is to assign to the said Shackleford, Richard C. Anderson's bond for six hundred and seventy-three pounds six shillings and two pence, due the first day of January next, out of which the said Shackelford is to repay to the said Buckner seventy-three pounds six shillings and two pence; and whereas, the said Philip Buckner hath lately directed a suit to be commenced in the Federal Court, held in the city of Richmond, in Virginnia, upon a bond due from Reuben Coutts to said Buckner, for the sum of three hundred pounds, with a credit endorsed for fifty pounds; the said Shackelford agrees to wait for so much of the said one thousand and twenty pounds, as shall be the amount of the said Coutt's bond, until judgment can be obtained thereon, upon the said Buckner's giving an order in writing, directing the attorney prosecuting the suit to pay the amount of the judgment, when recovered, to the said Shackelford; but if the money due upon the said bond cannot be obtained from the said Coutts, then the said Buckner is to pay the amount thereof

to the said Shackleford, and for the balance of the one thousand and twenty pounds before mentioned, after deducting the six hundred pounds to be paid in Richard C. Anderson's bond, and the amount of Reuben Coutt's bond, the said Shackelford agrees to wait until the said Buckner shall have sold the one thousand seven hundred acres of land hereinbefore mentioned, provided such sale shall be made before the first day of January, 1799, at which time the said Buckner is to pay the said balance to the said Shackelford, unless the land shall be sold sooner; and if it is, the said balance is to be payable whenever such sale shall be made; and the said Shackelford on his part, doth further agree, that he will procure a patent for the said one thousand acres of land hereinbefore mentioned, and that he will convey or cause to be legally conveyed, the said one thousand acres of land, and seven hundred acres of land unto the said Philip Buckner, his heirs and assigns forever, free from the claim or claims of all and every other person or persons, whatsoever. In witness whereof, the said Lyne Shackelford and Philip Buckner hath hereunto set their hands and seals, the day and year above written.

And whereas, afterwards, to wit, on the 16th day of May, 1803, in the circuit and district aforesaid, the said covenant being then and there, *being* in full force, and unsatisfied by the said Buckner, the said Lyne Shackelford assigned and transferred all his right and interest, in and to the said contract, to the plaintiff, and authorised him to receive from the said Buckner the balance due upon the same, then and there, amounting to five hundred and thirty pounds nine shillings, of which assignment and transfer, the said Buckner then and there had notice; and the plaintiff avers that the said Shackelford hath faithfully kept and performed all and singular, the covenants to be by him kept and performed according to the said writing obligatory; yet the said Philip Buckner hath not kept and performed all or either of the covenants in the said writing obligatory, to be by him kept and performed, but has altogether broken the said covenant, in this, to wit: He did not pay to the said Lyne Shackelford, before the date of the assignment af'sd, the said one thousand and twenty pounds, according to his covenant aforesaid, nor has he paid the same to the pl'ff since the said assignment, according to his said covenant, and the said defendant has also broken the said covenant in this, to wit: He did not, before the assignment aforesaid, assign to the said Shackelford, Richard C. Anderson's bond for six hundred and twenty-three pounds six shillings and two pence, due the first day of January next ensuing, the date of the said covenant, nor has he assigned the same to the plaintiff, since the date of the assignment of said covenant; and in this, to wit: the said Buckner did not, before the assignment of the said covenant to the plaintiff, give to the said Shackelford, an order in writing, directing the attorney prosecuting the suit of the said Buck-

ner, against Reuben Coutts, in the Federal Court in the city of Richmond, in Virginia, upon a bond due from Reuben Coutts to said Buckner, for three hundred pounds, with a credit endorsed for fifty pounds to pay the amount of the judgment, when recovered, to said Shackelford, nor has the said defendant ever given the said order to the plaintiff since the date of the assignment of the covenant aforesaid; and the plaintiff avers that the said Shackelford did not, before the assignment of the covenant af'sd, obtain from the said Coutts the amount due the said Buckner, upon the aforesaid bond, of him, the said Coutts, nor has the plaintiff obtained the amount thereof, or any part thereof, from the said Coutts, since the assignment of the said covenant; nor did the said Buckner pay the same to the said Shackelford before the assignment of the said covenant; nor has he paid the same or any part thereof, to the pl'ff, since the assignment of the said covenant. And the said defendant hath broken his said covenant in this also, to wit: He did not pay to the said Shackelford, the first day of January, 1799, nor at any time before the said assignment, the balance of the one thousand and twenty pounds, after deducting therefrom the six hundred pounds to be paid in Richard C. Anderson's bond, and the amount of Reuben Coutts' bond, which balance, the plaintiff avers, amounts to one hundred and seventy pounds; nor did the said defendant pay the said Shackelford the said balance, after deducting the amount of the said bonds, at any time before the first day of January, 1799, or before the date of the said assignment; nor has he paid the said balance to the plaintiff, or any part thereof, since the date of the said assignment. By reason of which several breaches and non-performances aforesaid, the said plaintiff hath sustained damage to the amount of three thousand dollars, and therefore he sues, &c.

ADAMS, *P. Q.*

And afterwards, to wit, at rules held in the clerk's office of the court af'sd, in the month of March, in the year last aforesaid, came the plaintiff aforesaid, by his attorney, and then and there entered a rule to plead.

And afterwards, at rules held as aforesaid, in the month of April, in the year afor'sd, the said defendant doth not come, nor say any thing in bar or preclusion of the plff's action, but hath made default, whereby the plff. recovers against the said defendant therein undefended. Therefore, it is considered that the plaintiff recover against the said defendant, his damages sustained by reason of the non-performance of the covenants in the declaration mentioned; but because it is not known what damages the plaintiff hath sustained thereby, the marshal is commanded that he cause to come here, &c., twelve good and lawful men, &c., by whom, &c.

And afterwards, to wit, at a court holden for the Circuit and District aforesaid, at the May term, in the year of our Lord

1815, "came the parties aforesaid, by their attornies, and, on motion of the said defendant, it is ordered, that the judgment and writ of enquiry herein awarded against him, in the clerk's office, be set aside; and the said def't, by his att'y, comes and craves oyer of the writing obligatory in the declaration mentioned, which is read to him.

Articles of agreement made and entered into, the sixteenth day of November, in the year one thousand seven hundred and ninety-seven, between Lyne Shackelford, of the County of King and Queen, in the State of Virginia, of the one part, and Philip Buckner, of the County of Bracken, in the State of Kentucky, of the other part, witnesseth:

That for and in consideration of the sum of one thousand and twenty pounds, current money of Virginia, to be paid by the said Philip Buckner, to the said Lyne Shackelford, as hereinafter expressed, he, the said Lyne Shackelford, hath bargained and sold unto the said Philip Buckner, one thousand acres of military land, No. 1080, surveyed for Javin Miller, in the district set apart for the officers and soldiers of the Virginia line of the late continental army, on the north-west side of the Ohio river, beginning at a gum and two small ashes, east corner to Alexander Parker's survey, No. 834, and south corner to Benjamin Moseley's survey, No. 1102, running with Moseley's line N. 45, E. 500 poles, to a walnut lynn and mulberry, east corner to Mosely, thence S. 45 E. 320 poles, to three ashes, thence S. 45 W. 500 poles, to a walnut and cherry, thence N. 45 W. 320 poles, to the beginning; and also, seven hundred acres of military land, lying in the same district, being part of thousand acres, No. 1064, surveyed for Beverly Roy, three hundred acres of which one thousand acres, have been heretofore sold to William Buchannon; and the said Philip Buckner, on his part, agrees to pay the said one thousand and twenty pounds as follows: he is to assign to the said Shackelford, Richard C. Anderson's bond for six hundred and seventy-three pounds six shillings and two pence, due the first day of January next; out of which the said Shackelford is to pay to the said Buckner, seventy-three pounds six shillings and two pence; and, whereas, the said Philip Buckner has lately directed a suit to be commenced in the federal court held in the city of Richmond, in Virginia, upon a bond due from Reuben Coatts to said Buckner; for the sum of three hundred pounds, with a credit endorsed, of fifty pounds, the said Shackelford agrees to wait for so much of the said one thousand and twenty pounds, as shall be the amount of the said Coats' bond, until judgment can be obtained thereon, upon the said Buckner giving an order in writing, directing the attorney prosecuting the suit, to pay the amount of the judgment, when recovered, to the said Shackelford; but if the money due upon the said bond, can-

not be obtained from the said Coats, then the said Buckner is to pay the amount thereof to the said Shackelford; and for the balance of one thousand and twenty pounds before mentioned, after deducting the six hundred pounds, to be paid in Richard C. Anderson's bond, and the amount of Reuben Coatts' bond, the said Shackelford agrees to wait until the said Buckner shall have sold the one thousand seven hundred acres of land, herein before mentioned, provided such sale shall be made before the first day of January, 1799, at which time the said Buckner is to pay the said balance to the said Shackelford, unless the land shall be sold sooner; and if it is, the said balance is to be payable whenever such sale shall be made; and the said Shackelford, on his part, doth further agree that he will procure a patent for the said one thousand acres of land, herein before mentioned, and that he will convey or cause to be legally conveyed, the said one thousand acres of land, and seven hundred acres of land, unto the said Philip Buckner, his heirs and assigns forever, free from the claim or claims of all and every other person or persons whatsoever.

In witness whereof, the said Lyne Shackelford and Philip Buckner have hereunto set their hands and seals, the day and year above written.

LYNE SHACKELFORD, [L. S.]
PHILIP BUCKNER. [L. S.]

Sealed and delivered in presence of
NATH'L PATTERSON,
DICK'N. MORRIS,
WILLIS HORD.

Rec'd, the 16th of November, 1797, of Lyne Shackelford, twenty-three pounds six shillings and two pence, mentioned in the foregoing agreement, to be re-paid out of Richard C. Anderson's bond.

PHILIP BUCKNER.

Test:
WILLIS HORD.

1803, *May* 16.

I assign and transfer all my right and interest in and to the within contract, to Edwin Upshaw, and authorize him to receive from the within named Philip Buckner, the balance due upon the same, amounting this day to five hundred and thirty pounds nine shillings.

LYNE SHACKELFORD.

Test:
JOHN ROWAN.

April 10*th*, 1805.

Rec'd of P. Buckner, $100, part of the within, as per rec't, same date. J. O. B.

April 18*th*, 1806.

Received of Philip Buckner, $100, as part of the within, as per rec't of this date. J. O. B."

Whereupon, he saith, that the plff. his action aforesaid, against him, ought not to have and maintain, because he saith, that the said declaration and the matter therein contained, are not sufficient in law to support his action aforesaid, to which he hath no occasion, nor is he bound by the law of the land, to answer; and this he is ready to verify, &c. Wherefore, he prays judgment, &c.

HARDEN, *for Deft.*

And the plaintiff saith, his said declaration and the matter therein contained, are sufficient to support his action aforesaid; wherefore, and for as much as the said plff. hath in no respect denied the same, he prays judgment, &c.

And afterwards, to wit, at a subsequent day of the term last mentioned, "the court being now sufficiently advised of and concerning the demurrer, do adjudge that the same is sufficient in law to bar and preclude the plaintiff from having and maintaining his action aforesaid, and that the defendant go hence and recover of the plaintiff his cost herein expended.

UNITED STATES OF AMERICA, *sct.*

I, John H. Hanna, Clerk of the seventh circuit court of the United States in and for the district of Kentucky, do certify, that the within and foregoing eleven pages contain a full, true and complete transcript of the record in the case therein mentioned.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, at Frankfort, this [L. S.] 1st day of January, A. D. 1819, in the 43d year of our Independence.

JOHN H. HANNA.

Patent to Upshaw.

John Quincy Adams, President of the United States of America, to all to whom these presents shall come, greeting:

Know ye, that in consideration of military service performed by Beverly Roy, for three years a captain to the United States in the Virginia line, on continental establishment, and in pursuance of an act of the Congress of the United States, passed on the 10th day of August, in the year 1790, entitled "An act to enable the officers and soldiers of the Virginia line on continental establishment, to obtain titles to certain lands, lying northwest of the river Ohio, between the little Miami and Sciota;" and other act of said Congress, amendatory to the said act, there is granted by the United States unto Edwin Upshaw, assignee of said Beverly Roy,

a certain tract of land, containing one thousand acres, situate between the little Miami and Sciota rivers, northwest of the river Ohio, as by survey bearing date the 27th day of December, in the year one thousand seven hundred and eighty-seven, and bounded and described as follows, to wit: Survey of one thousand acres of land, on part of a military warrant, No. 154, in favor of said Beverly Roy, the whole thereof being for four thousand acres on the northwest of the Ohio, and on the waters thereof; beginning at two ashes and a hoop wood, north corner to John Campbell's survey, No. 866, running south forty-five degrees west, five hundred poles, crossing a branch at two hundred and eighty-six poles, to a white-oak, hickory and poplar, west corner to William Smith's survey, No. 866; thence north forty-five degrees west, three hundred and twenty poles to a sugar tree and two ashes; thence north forty-five degrees east, five hundred poles, crossing a branch at three hundred and twelve poles, to a sugar tree and two dog-woods; thence south forty-five degrees east, three hundred and twenty poles, to the beginning; excluding therefrom three hundred acres of land, conveyed by said Roy to William Buchannon, by deed bearing date the 18th day of October, in the year one thousand seven hundred and ninety-six, and bounded and described as follows, to wit: Beginning at two ashes and a hoop wood, corner to said survey of one thousand acres; thence south forty-five degrees west, three hundred poles, to three beeches; thence north forty-five degrees west, one hundred and sixty poles, to a white-oak, white-walnut and beech; thence north forty-five degrees east, three hundred poles to a lynn, sugar tree and elm; thence south forty-five degrees, east one hundred and sixty poles, to the beginning, with the appurtenances: to have and to hold the said tract of land, with the appurtenances, unto the said Edwin Upshaw, and his heirs and assigns, forever.

In witness whereof, the said John Quincy Adams, President of the United States of America, hath caused the seal of the general land office to be hereunto affixed, [L. S.] and signed the same with his hand, at the City of Washington, the twenty-fourth day of October, in the year of our Lord 1826, and of the Independence of the United States of America, the fifty-first.

J. Q. ADAMS.

GEORGE GRAHAM,
Commissioner of the General Land Office.

Endorsement:

Recorded in volume eleven, page 596.

And on motion, the court do allow said injunction as prayed for; injunction bond waived as per agreement of parties; and thereupon

Mr. Hammond, counsel for defendant, waives the service of process and enters his appearance. And afterwards, to wit, at the July term of said court, in the year of our Lord one thousand eight hundred and thirty-two, to wit, Saturday, July 21st, the following proceedings were had, to wit:

Decree.

JOHN BUCHANNON, and others, pltff's., *vs.* EDWIN UPSHAW, deft. } In chancery.

This day came the complainants, by their counsel, and the said defendant still failing to appear and plead, answer or demur, to the bill of the complainants, agreeably to the rules and usages of this court, it is therefore ordered, adjudged and decreed by the court, that the bill of complaint of the complainants be taken for confessed. In consideration whereof, it is ordered, adjudged and decreed, that the defendant shall and do, on or by the second day of our next term, make, execute and deliver, unto the complainants, John Buchannon and Andrew Buchannon, as tenants in common, a good and sufficient deed of quit claim, with covenants of special warranty, for the following described tract of land in the pleadings mentioned, to wit: beginning 83 poles from the S. E. corner of the original survey in the old line, running N. 45 W., from three ashes, the beginning; thence N. 45 W., with the original line, 155 poles to an elm and 2 lynns, S. E. corner to Camarier's survey; thence N. 49° 55′ E., 212 poles to an ash, and white-oak and dog-wood, S. 45° E., 152 poles to a sugar tree, elm and beech; thence a straight line to the beginning. And it is further adjudged and decreed, that the defendant shall and do, on or before the said second day of our next term, make, execute and deliver, unto the said complainant, John McWilliams, a good and sufficient deed of quit claim, with covenants of special warranty, for the following described tract of land in the pleadings mentioned, to wit: beginning at the N. W. corner of the original survey, two dog-woods and a sugar tree; thence with the old line S. 45 E., 90 poles to an elm, sassafras and cherry, in said line; thence S. 45° 15′ west, 182 poles, to three sugar trees, 45 W., 95 poles, to two ashes and dog-wood in the old line; thence with the old, N. 45 E., 182 poles, to the beginning; reference being had to the deed specified in the bill will more fully appear, which deed is an exhibit. And it is further ordered, adjudged and decreed, that the said defendant shall and do, on or before the said second day of our next term, execute and deliver unto the complainant, John Camarer, a good and sufficient deed of quit claim, with covenants of special warranty, for the following described tract of land in the bill mentioned, to wit: beginning at the northeast

corner of Alexander Buchannon's survey, a white oak, ash and dog wood, N. 45 W., 122 poles, to two white oaks and a dog wood in the old line, S. 45° W., with the old line, 190 poles, to a beech and two ashes, the original corner; thence with the old line S. 54° E., 105 poles, to two lynns and elm, N. 49° 5′ E., 112 poles, to the beginning. And it is further ordered, adjudged and decreed, that the said defendant shall and do, on or before the said second day of our next term, execute and deliver, unto the complainant, David Wood, a good and sufficient deed of quit claim, with covenants of special warranty, for the following described tract of land, in the bill mentioned, to wit: beginning at three beeches, on the south line of the original survey in the pleadings mentioned; thence S. 50 W., two hundred and twelve poles, to a poplar, hickory and white-oak; thence N. 45° W., 40 poles, to a white-oak and sugar tree; thence north 50 east, two hundred and thirteen poles, to two blue ashes and an elm. in the east line of Ford's survey; thence with said line to the beginning. And it is further ordered, adjudged and decreed, that the said defendant shall and do, on or before the said second day of our next term, execute and deliver, unto the complainant, Samuel Buchannon, a good and sufficient deed of quit claim, with covenants of special warranty, for the following described tract of land in the bill mentioned, to wit: beginning at two sugar trees, in the old line of said survey in the pleadings mentioned, and with William's line S. 43° 15′ W., 182 poles, to two ashes and a sassafras, N. 45° W., 97 poles, to James Buchannon's corner, three sugar trees; thence with said Jame's line N. 46° 15′ E., 182 poles, to an elm, sassafras and cherry, in the old line; thence with the said line S. 45° E., 79 poles to the beginning.

And it is further ordered, adjudged and decreed, that the said defendant shall, and do, on or before the said second day of our next term, execute and deliver unto John Fisher, Jacob Fisher, David Fisher, Henry Fisher, and Daniel Fisher, a good and sufficient deed of quit claim, with covenants of special warranty, for the following described tract of land, as tenants in common, to wit: beginning at the N. W. corner of John Camarer's survey, at two white oaks and a dogwood, in the old line of the survey in the pleadings mentioned; thence S. 45°, E. 194 poles, to a white oak and walnut; thence N. 42° 16′, E. 128 poles, to two ashes and a sassafras; thence N. 45°, W. 192 poles, to an ash and dogwood in the old line; thence S. 45 W. 128 poles to the beginning; who shall hold the same subject to the provisions and limitations of, and according to the will of Adam Fisher, deceased.

And it is further ordered, adjudged and decreed, that the injunction herein allowed, be, and the same is hereby made perpetual; and that the complainants within the said time aforesaid, that is, by the second day of our next term, pay full cost to the complain-

ants, and on default so to do, that executions issue therefore, as on judgments and executions at law.

It is ordered by the court here, that unless the said defendant shall appear in this court on or before the third day of the next term, and shew cause against the aforesaid decree, the same will be ordered to be made absolute and final.

It is further ordered, that a copy of the above decree and order, served on Charles Hammond, Esq., attorney and solicitor of the said defendant, shall be deemed a good service, to all intents and purposes, as if made upon the defendant himself, provided the same shall be made not less that thirty days before the first day of our next term—and this cause is continued.

And afterwards, to wit: on the twelfth day of October, in the year last aforesaid, a certified copy of a decree made in this case was put into the hands of the Marshal of the United States of the District of Ohio, in the words and figures, to wit:

Copy of Decree.

JOHN BUCHANNON and others, plffs.
vs.
EDWIN UPSHAW, deft. } In Chancery, July Term, 1832.

7th Circuit Court of the United States, Ohio District.

Saturday, July 21st.

This day came the complainants by their counsel, and the said defendant still failing to appear and plead, answer or demur to the bill of the complainants, agreeably to the rules and usages of this court, it is therefore ordered, adjudged and decreed by the court, that the bill of complaint of the complainants be taken for confessed. In consideration whereof, it is ordered, adjudged, and decreed, that the defendant shall, and do, on or by the second day of our next term, make, execute, and deliver unto the complainants, John Buchannon and Andrew Buchannon, as tenants in common, a good and sufficient deed of quit claim, with covenants of special warranty, for the following described tract of land, in the proceedings mentioned, to wit:

Beginning 83 poles from the S. E. corner of the original survey in the old line, running N. 45 W., from three ashes to the beginning; thence N. 45 W. with the original line, 155 poles to an elm and two lynns; S. E. to Camarer's Survey; thence N. 49° 55', E. 212 poles to an ash and white oak and dogwood; S. 45 E., 152 poles to a sugar elm and beech; thence a straight line to the beginning.

And it is further adjudged and decreed, that the defendant shall, and do, on or before the said second day of our next term, make, execute and deliver, unto the said complainant, John McWilliams, a good and sufficient deed of quit claim, with covenants of special warranty, for the following described tract of land in the pleadings mentioned, to wit:

Beginning at the North W. corner of the original survey, two dogwoods and a sugar tree; thence with the old line S. 45 E., 90 poles, to an elm, sassafras, and cherry, in said line; thence S. 45° 15′ W. 182 poles, to three sugar trees, 45 W. 95 poles to two ashes and a dogwood in the old, line; thence with the old N. 45 E., 182 poles, to the beginning; reference being had to the deed specified in the bill will more fully appear, which deed is an exhibit.

And it is further ordered, adjudged and decreed, that the said defendant shall, and do, on or before the said second day of our next term, execute and deliver unto the complainant, John Camarer, a good and sufficient deed of quit claim, with covenants of special warranty, for the following described tract of land, in the bill mentioned, to wit:

Beginning at the N. E. corner of Alexander Buchannon's Survey, a white oak, ash and dogwood; N. 45 W., 122 poles to two white oaks and a dogwood in the old line; S. 45, W. with the old line 190 poles, to a beech and two ashes in the original corner; thence with the old line S. 45°, E. 105 poles, to two lynns and elm; N. 49° 55′ E., 112 poles, to the beginning.

And it is further ordered, adjudged and decreed, that the said defendant shall, and do, on or before the said second day of our next term, execute and deliver unto the complainant, David Wood, a good and sufficient deed of quit claim, with covenants of special warranty, for the following described tract of land in the bill mentioned, to wit:

Beginning at the three beeches on the south line of the original survey in the pleadings mentioned; thence S. 50 W., 212 poles to a poplar, hickory and white oak; thence N. 45° W., 40 poles to a white oak and sugar tree; thence N. 50 E., 213 poles to two blue ashes and an elm in the east line of Ford's Survey; thence with said line to the beginning.

And it is further ordered, adjudged and decreed, that the said defendant shall, and do, on or before the said second day of our next term, execute and deliver unto the complainant, Samuel Buchannon, a good and sufficient deed of quit claim, with covenants of special warranty, for the following described tract of land in the bill mentioned, to wit:

Beginning at the two sugar trees in the old line of said survey in the pleadings mentioned, and with William's line; S. 42°, 15′ W., 182 poles, to two ashes and a sassafras; N. 45 W. 97 poles, to James Buchannon's corner, three sugar trees; thence with said James' line N. 45° 15′, E. 182 poles, to an elm, sassafras and cherry, in the old line; thence with the said line S. 45 E., 79 poles, to the beginning.

And it is further ordered, adjudged and decreed, that the said defendant shall, and do, on or before the said second day of our next term, execute and deliver unto John Fisher, Jacob Fisher,

David Fisher, Henry Fisher, and Daniel Fisher, a good and sufficient deed of quit claim, with covenants of special warranty, for the following described tract of land, as tenants in common, to wit:

Beginning at the N. W. corner of John Camarer's Survey, at two white oaks and dogwood in the old line of the survey, in the pleadings mentioned; thence S. 45° E., 194 poles, to a white oak and walnut; thence N. 42° 16', E. 128 poles, to two ashes and a sassafras; thence N. 45 W., 192 poles, to an ash and dogwood in the old line; thence S. 45 W., 128 poles, to the beginning. Who shall hold the same subject to the provisions and limitations of, and according to the will of Adam Fisher, deceased.

And it is further ordered, adjudged and decreed, that the injunction herein allowed, be, and the same is hereby made perpetual. And that the complainants within the said time aforesaid, that is, by the second day of our next term, pay full costs to the complainants; and on default so to do, that execution issue therefore, as on judgments and executions at law. It is ordered by the court here, that unless the said defendant shall appear in this court on or before the third day of the next term, and show cause against the aforesaid decree, the same will be ordered to be made absolute and final.

It is further ordered, that a copy of the above decree and order served on Charles Hammond, Esq., attorney and solicitor of the said defendant, shall be deemed good service to all intents and purposes, as if made upon the defendant himself, provided the same shall be made not less than thirty days before the first day of our next term.

A true copy taken from the journal of said court.

Attest: WILLIAM MINOR, *Clerk.* [L. S.]

Columbus, Oct. 12th, 1832.

And afterwards, to wit: at the December term of said court, anno Domini, one thousand eight hundred and thirty-two, the marshal returned into court here, the aforegoing recited copy of decree, with the following endorsement, and return of service thereon, to wit:

"I acknowledge service of this decree.

C. HAMMOND,
Att'y for respondent.

Oct. 27, 1832.

Service made of the within, on the 27th October, 1832.

JOHN PATTERSON, *M'l.*

And thereupon, "on motion of the defendant, by Mr. Hammond, his counsel, the decree entered in this cause at the last term is opened up, and thereupon the defendant files his answer," which said answer is in the words and figures following, to wit:

Answer.

To the honorable the judges of the Circuit Court of the United States, for the seventh circuit and district of Ohio.

The answer of Edwin Upshaw to the bill of complaint of Andrew Buchannon, John Buchannon, John McWilliams, John Camarer, David Wood, Samuel Buchannon, John Fisher, Jacob Fisher, Henry Fisher, David Fisher, and Daniel Fisher, in this court exhibited against him.

This respondent, saving and reserving to himself all benefit of exception to the said biil of complaint, for answer to so much thereof as he is advised it is material for him to answer unto, he answers, and says: That true it is, he purchased of Lyne Shackelford, the two tracts of land in the bill mentioned, with a knowledge, at the time of the purchase, that the legal title was not in said Shackelford. The tract now claimed by complainants, this respondent knew was surveyed for Beverly Roy, and it was understood between Shackelford and this respondent, that Roy was to make the conveyance, in pursuance of which, said Roy and wife, on the 20th of July, 1797, executed to respondent the deed in the bill stated, and at the same time said Roy executed a bond to this respondent, binding himself to make any further deed of conveyance that might be deemed necessary; a copy of which is herewith filed, and the original referred to as part of this answer.

This respondent further answering, admits, that said Shackelford subsequently sold said land to Philip Buckner; but this respondent denies that he authorized said Shackelford to make such sales, or that it was made with his knowledge or assent. This respondent admits that the sale of the two tracts of land by Shackelford to Buckner, was made in gross for the sum stated, and the payments to be made as therein stated. This respondent admits, that subsequent to the said sale to Buckner, he qualifiedly assented thereto, and accepted an assignment of Buckner's contract with Shackelford, upon which it was specified that there was five hundred and thirty pounds nine shillings due, at the time of accepting this assignment; and for many years afterwards, this respondent had no knowledge that Buckner had made sales of any part of said lands. This respondent admits, that he received from Shackelford, Buckner's order upon Copeland, for the amount due from Coats, who was then an insolvent, and this respondent avers that the said suit against Coats was diligently prosecuted, and nothing finally obtained from him; this respondent admits, that at the time when Shackelford assigned him Buckner's contract, a final settlement was made between Shackelford and this respondent, as to the amount of money due between them. But this respondent further states, that he then supposed the legal title for the Roy land was in himself, and retained it with a reference to secure the purchase money

which was the consideration, in part, of the writing then executed by him to said Shackelford, set forth in said bill.

This respondent, in further answering, states, that he does not know what were the circumstances of Buckner at the time of said contract, but he then thought him responsible. This respondent admits, that in 1804, he put Buckner's contract into the hand of J. H. Upshaw, with a deed of conveyance to Buckner, for the land in Roy's survey, and with instructions not to receive any part of the money, unless the whole was paid, and upon such payment only, to deliver the deed to Buckner; J. H. Upshaw received no money, and left the papers with O'Bannon, with instructions given to himself. O'Bannon never was the agent of this respondent, or authorized by him to act in the matter. This respondent knows nothing about the money received by O'Bannon, none of which he ever received, and the receipt of which he has never sanctioned in any way whatever.

In further answering, this respondent states, that the final insolvency of Coats was not known and ascertained, until about the year 1814; very soon after that fact was known, this respondent instituted a suit against Buckner, in the United States Circuit Court, for the district of Kentucky, which was adjudged against him, on the ground that Buckner's contract was not assignable. After this decision, which was made in May, 1815, to wit: in October 1818, this respondent having ascertained that the land was in possession of individuals, claiming as owners, caused an ejectment to be brought against them in the Federal Circuit Court, for the district of Ohio, where, after much delay, it was adjudged that the patent from the commonwealth of Virginia, to Roy, dated 11th December, 1789, was void, because made after the cession of the lands north-west of the Ohio, to the United States. In consequence of this decision, this respondent proceeded to obtain from the United States a patent for said lands, dated 24th October, 1826, upon which he recovered the judgement at law, in the bill stated, which patent this respondent insists was fairly and legally obtained, without any taint of fraud whatever.

This respondent, further answering, states, that the second deed from Roy and wife, in 1817, was made in compliance with the contract, for further assurance, heretofore referred to in this answer. And in respect to the special interrogatories in said bill, put for this respondent to answer, he believes the same are already fully answered, except in relation to the diligence against Coats, and the enquiry, whether any money ever was received from him. This respondent states, that he has understood that Coats was insolvent at the time of the contract between Buckner and Shackelford; and this respondent believes, that as early as Jan'y, 1803, Buckner was informed by Shackelford, that Coats was insolvent, and in prison bounds, where respondent understood he remained until his death; subsequent to which event, a suit in chancery was

prosecuted, to reach property in the hands of his heirs, without effect, which continued until after the year 1812, before the failure of which, this respondent brought suit against Buckner, as before stated; no money ever was received by this respondent, from said Coats. This respondent never paid any taxes on said lands; he considered them sold, until the failure of the purchaser to complete his contract compelled him to look to them, and then he found them in the possession of others claiming to be the owners.

This respondent, in further answering, states, that he has never received one dollar of the purchase money of said Roy tract of land; that standing in the shoes of Shackelford, as against Buckner, and having no contract or privity of contract with the purchaser from Buckner, he conceives they can have no right to come into a court of equity, to enforce the specific performance of the contract with Buckner, who it is respectfully submitted could not, after so great delay, and a total failure to pay the purchase money, ask for a specific performance; but in any event, this could not be asked without making payment of the purchase money and interest, and the expenses incurred in pursuing the recovery of that purchase money.

This respondent knows nothing of the claims and rights of the several complainants, but is willing to admit them. He denies all fraud and unlawful combination; and having answered complainant's bill, prays to be hence dismissed with his costs, &c.

C. HAMMOND,
Solicitor for Respondent.

CITY OF CINCINNATI, OHIO, *to wit:*

Before Elisha Hotekiss, Mayor of the city of Cincinnati, personally came Edwin Upshaw, and made oath that the matters stated in the foregoing answer, are true to the best of his knowledge and belief.

Sworn and subscribed before me, this 12th day of October, 1832.

EDWIN UPSHAW.

[L. S.] Sworn to and subscribed before me; in witness whereof, I have hereunto set my hand and affixed the seal of said city, this 12th day of October, 1832.

E. HOTEKISS, *Mayor.*

Exhibits referred to in the foregoing answer.

Deed—Roy to Upshaw.

"This indenture, made the twentieth day of July, in the year of our Lord one thousand seven hundred and ninety-seven, between Beverly Roy, of the county of King and Queen, of the one part,

and Edwin Upshaw, of the county of Essex, of the other part, witnesseth: that the said Beverly Roy, for and in consideration of the sum of three hundred and fifty pounds, current money Virginia, by the said Edwin Upshaw to him in hand paid, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, and by these presents doth grant, bargain, and sell unto the said Edwin Upshaw, his heirs and assigns, a certain tract or parcel of land, containing seven hundred acres, being the residue of one thousand acres after deducting three hundred acres, sold out of the said thousand acres to William Buchannon, of the county of Mason, in the State of Kentucky; which said tract of land is situate and lying in the territory north-west of the river Ohio, and was granted to the said Beverly Roy by the Commonwealth of Virginia, by patent bearing date the eleventh day of December, one thousand seven hundred and eighty-nine, and bounded as follows, to wit:

Beginning at two ashes, hoopwood, north corner to John Campbell's survey, No. 866, running south forty-five degrees, west five hundred poles, crossing a branch at two hundred and eighty-six poles, to a white ash, hickory and poplar, west corner to William Smith's survey, No. 866; thence north five degrees, west three hundred and twenty poles, to a sugar tree and two ashes; thence north forty-five degrees, east five hundred poles, crossing a branch at three hundred and twelve poles, to a sugar tree and two dogwoods; thence south forty-five degrees, east three hundred and twenty poles, to the beginning: together with all and singular the appurtenances thereto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits, and of every part and parcel thereof: to have and to hold the said seven hundred acres of land, with all and singular its appurtenances, unto the said Edwin Upshaw, his heirs and assigns, forever. And the said Beverly Roy, for himself and his heirs, the said tract of land, with its appurtenances, unto the said Edwin Upshaw, his heirs and assigns, free from the claim or claims of him, the said Beverly Roy, his heirs, and all and every other person or persons whatsoever, shall, will, and do warrant and forever defend, by these presents.

In witness whereof, the said Beverly Roy hath hereunto set his hand and seal, the day and year first above written.

BEVERLY ROY. [L. S.]

Sealed and delivered in the presence of
PHIL. TALIAFERRO,
WM. DUDLEY,
JNO. TRUNKS.

COMMONWEALTH OF VIRGINIA,
King and Queen county, to wit:

This day Beverly Roy personally appeared before us, Philip

Taliaferro, and William Dudley, two of the Commonwealth's justices of the peace, for the county aforesaid, and acknowledged the within indenture to be his act and deed.

Given under our hands the twentieth day of July, 1797.

PHIL. TALIAFERRO,
W. DUDLEY.

VIRGINIA, *King and Queen county, to wit:*

I, Robert Pollard, clerk of the court of said county of King and Queen, do hereby certify, that Philip Taliaferro and William Dudley, gentlemen, at the time of sealing the above certificate, were, and now are justices of the peace for this Commonwealth, in the county aforesaid, to which certificate due credit ought to be given.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, this 21st day of July, 1797, in the 22d year of the Commonwealth.

ROBERT POLLARD. [L. S.]

RECORDER'S OFFICE, *Hamilton county, Ohio, ss.*

I certify the above to be a true copy of a deed of conveyance from Beverly Roy to Edwin Upshaw, as appears of record in this office, in book C, No. 1, page 83; recorded 9th April, 1799.

In testimony whereof, I have hereunto subscribed my name, and affixed my seal of office, at Cincinnati, in said county, [L. S.] this eleventh day of January, A. D. one thousand eight hundred and thirty.

GRIFFIN YEATMAN, *R. H. C. O.*

Roy's bond for 700 acres of land to Upshaw.

Know all men by these presents, that I, Beverly Roy, of the county of King and Queen, am held and firmly bound with Edwin Upshaw, of the county of Essex, in the just and full sum of three hundred and fifty pounds, current money of Virginia, to be paid to the said Edwin Upshaw, his heirs, executors, administrators, or assigns, to which payment well and truly to be made, I bind myself, my heirs, executors, and administrators, firmly by these presents; sealed with my seal, and dated the twentieth day of July, anno Domini one thousand seven hundred and ninety-seven.

The condition of the above obligation is such, that whereas, the above bound Beverly Roy hath, by indenture, bearing date with these presents, bargained and sold unto the said Edwin Upshaw, seven hundred acres of military land, lying in the territory northwest of the Ohio river, being part of one thousand acres granted to the said Roy, by patent bearing date the eleventh day of December, one thousand seven hundred and eighty-nine: Now, if the

said Beverly Roy and his heirs shall, at any time hereafter, upon the request of the said Upshaw, make and execute any other or further deed of conveyance, which may be necessary for the more effectual conveying the said land unto the said Upshaw, in fee simple, and shall, at any time hereafter, when required, procure the relinquishment of all claim of dower which the wife of him, the said Roy, hath or may have in the said tract of land; and shall save, harmless and indemnified, the said Upshaw, his heirs and assigns, from all such claim of dower, then the above obligation to be void, or else to remain in full force and virtue.

BEVERLY ROY. [L. S.]

Sealed and delivered in presence of
GEO. BOUDEN,
PHIL. TALIAFERRO.

And this cause is continued.

And afterwards, to wit, on the 14th day of June, anno Domini one thousand eight hundred and thirty-three, the complainants, by their counsel, filed their replication as follows, to wit:

"JOHN BUCHANNON, & als.,
vs.
EDWIN UPSHAW. } In Chancery.

Replication.

Replication.

And the said complainants, for replication to the answer of the defendant, say, that the bill and the matter therein contained are certain, true, and sufficient in law to have the relief sought, and that the said complainants] are ready to verify and prove the same, when and as this honorable court may direct, &c.

COLLINS & SWAN, *for Compts.*"

And afterwards, to wit, at the July term of said court, anno Domini one thousand eight hundred and thirty-three, this cause was further continued.

And afterwards, to wit, at the December term of said court, anno Domini one thousand eight hundred and thirty-three, this cause was further continued.

And afterwards, to wit, at the July term of said court, anno Domini one thousand eight hundred and thirty-four, "the parties, by their counsel, appeared, and on motion this cause is continued, with leave to amend the bill generally, and make new parties."

And afterwards, to wit, at the December term of said court, anno Domini one thousand eight hundred and thirty-four, this cause was further continued.

And afterwards, to wit, at the July term of said court, anno Domini one thousand eight hundred and thirty-five, "the parties, by their attornies, appear, and on motion the complainants' bill is dismissed without prejudice."

It is therefore ordered, adjudged, and decreed, that the respondent go hence without day, and recover of the complainants his costs herein expended; and that he have execution therefor, as at judgments at law. And it is further ordered, by consent of parties, that the writ of habere facias possessionum on the judgment in ejectment, in the bill described, be stayed until the next term of this court; and leave is given to each party to withdraw the title papers, by them respectively filed, they leaving certified copies of the same.

And afterwards, to wit, at the December term of said court, anno Domini one thousand eight hundred and thirty-five:

JOHN BUCHANNON and others, Compts.
vs.
EDWIN UPSHAW, Deft. } In Chancery.

Bill dismissed at July term, 1835.

On motion of the complainants by Mr. Swan, their counsel, and by consent of the defendant by his counsel, the court order this cause to be re-docketed, and give the complainants leave to amend their bill; and this cause is continued.

Friday, January 1st.

And afterwards, to wit: at the July term of said court, anno Domini, one thousand eight hundred and thirty-six, came the parties by their counsel, and thereupon "on motion leave is given the plaintiffs to amend their bill within sixty days, and on like motion the defendant has leave to file a new answer, and this cause is continued. And afterwards, to wit: at the December term of said court, anno Domini, one thousand eight hundred and thirty-six, came the parties by their counsel; and thereupon Mr. Scott gave notice, that on Thursday next he would move the court to dissolve the injunction in this cause.

Tuesday, December 20th.

JOHN BUCHANNON, et al., Compt.,
vs.
EDWIN UPSHAW, Respt. } In Chancery.

By consent the complainants have leave to amend their original bill in sixty days, in which event the defendant is to be at liberty to file an answer to the original and amended bills; no exceptions to be taken to any depositions which have or may be taken, previous to

the joining of the issue between the parties; and this cause is continued.

Thursday, December 22d.

And afterwards, to wit: at the May term of said court, anno Domini, one thousand eight hundred and thirty-seven, this cause was continued; and afterwards, to wit: at the December term, anno Domini, one thousand eight hundred and thirty-seven, Mr. Scott suggests the death of the defendant, Upshaw, and this cause is continued. And afterwards, to wit: at the July term of said court, Anno Domini, one thousand eight hundred and thirty-eight, on motion of Mr. Scott, and it appearing to the court, that the entry made at the last term of this court, suggesting the death of the defendant, Upshaw, is erroneous, it is ordered that the said entry be corrected.

Monday, July 2d.

JOHN BUCHANNON, Complt., *vs.* EDWIN UPSHAW, Respt. } In Chancery.

SAMUEL BUCHANNON, Compt. *vs.* EDWIN UPSHAW, et al., Respt. } In Chancery.

JOHN CAMARER, Compt. *vs.* EDWIN UPSHAW, et al., Respt. } In Chancery.

JOHN & ANDREW BUCHANNON, Compt., *vs.* EDWIN UPSHAW, et als., Respt. } In Chancery.

DAVID WOOD, Complt., *vs.* EDWIN UPSHAW, et al., Respt. } In Chancery.

JOHN MCWILLIAMS, Compt., *vs.* EDWIN UPSHAW, et al., Respt. } In Chancery.

In these cases the parties by their counsel agree, that the depositions now on file with the clerk, in either of the above causes, may be read as evidence on the hearing, except such of these, or such parts thereof as may be adjudged illegal, on account of irrelavancies in the witnesses, or the evidence of the matters deposed to; that these causes stand continued until the next term of this court, at which term the parties mutually agree that they shall be tried.

Saturday, July 7th.

And afterwards, to wit: at the December term of said court, anno Domini, one thousand eight hundred and thirty-eight, this cause was further continued; and afterwards, to wit: at the July term of said court, anno Domini, one thousand eight hundred and thirty-nine, came the parties by their counsel, and thereupon the following exhibits and depositions were used as evidence in this cause, to wit:

"PHILIP BUCKNER, plt., *against* REUBEN COUTTS, deft. } In debt.

May 1800, verdict and judg't, for £600 of the value of $2,000, to be discharged by the payment of $833 33, with interest at 5 pr. ct., from 19th May, 1791, till paid.

Ca. sa., 30th Aug't, 1800, not found.

BEN. MOSBY, *D. M., for the Marshal.*
D. M. RANDOLPH, *M. D. V.*

A Copy—Test:

WM. MARSHALL, *Clk.*"

Endorsement—Paid Thos. Dawson, in Crag's Exo'n, vs. Davis, £6 11 0—cash £1 16 0—Wm. Dixon, £3 4 0.

Received of Edwin Upshaw, this fourth of April, 1804, an agreement between Lyne Shackelford, Esq., and Philip Buckner, of Kentucky, for land, and by which agreement the said Shackelford had a right to claim of Buckner, on the execution of titles, £530 9. The benefit of which agreement has been assigned by Shackelford to the above Edwin Upshaw.

I have received of Edwin Upshaw the above papers, to collect for him the above amount, if possible.

JOHN H. UPSHAW.

I have undertaken to make conveyances to Philemon Buckner, of a certain tract of land, north of the Ohio, under power of attorney from Edwin Upshaw, and to receive of said Buckner the sum of five hundred and thirty pounds, for the above land, due under articles of agreement with Lyne Shackelford for the above land, which have been assigned to Edwin Upshaw; the above amount I promise to make every reasonable effort to collect.

JOHN H. UPSHAW.

Copies—Test:

EDMUND CHRISTEAN, *C. C.*

A bond has been put into my hands to bring suit on, in the Fed'l Court, Philip Buckner ag't Reuben Coutts, the condition of which is three hundred pounds, for which some payments are endorsed.

J. MARSHALL.

October, 24th, '92.

Deed—Roy to Buchannon.

This indenture, made the eighteenth day of October, in the year of our Lord, one thousand seven hundred and ninety-six, between Beverly Roy, of the County of King and Queen, in the State of Virginia, of one part, and William Buchannon, of the County of Mason, in the State of Kentucky, of the other part, witnesseth: that, for and in consideration of the sum of two hundred and twenty-five pounds current money, of Kentucky, by the said William Buchannon to the said Beverly Roy in hand paid, the receipt whereof he doth hereby acknowledge, he, the said Beverly Roy hath granted, bargained and sold, aliened, enfeoffed, and confirmed, and by these presents doth grant, bargain and sell, alien, enfeoff and confirm, unto the said William Buchannon, his heirs and assigns, a certain tract or parcel of land, situate, lying and being, in the County of Hamilton, in the Territory north-west of the Ohio river, containing by survey three hundred acres, being part of a military survey of one thousand acres, granted by the Commonwealth of Virginia, to the said Beverly Roy, by patent, bearing date the eleventh day of December, one thousand seven hundred and eighty-nine; the said three hundred acres is bounded as follows: beginning at two ashes and a hoop wood, corner to said survey of one thousand acres; thence south 45 west three hundred poles to three beeches; thence north 45, west one hundred and sixty poles, to a white oak, white walnut and beech; thence north 45 east three hundred poles, to a lynn, sugar-tree and elm; thence south 45 east, one hundred and sixty poles, to the beginning; together with all ways, waters, water-courses, privileges, hereditaments and appurtenances, thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of him, the said Beverly Roy, of, in and to the same.

To have and to hold the said tract or parcel of land, with all and singular the appurtenances, unto the said William Buchannon, his heirs and assigns forever.

And the said Beverly Roy doth, for himself and his heirs, covenant and grant to and with the said William Buchannon, his heirs and assigns, that he, the said Beverly Roy and his heirs, the said tract or parcel of land, with all and singular its appurtenances, unto the said William Buchannon, his heirs and assigns, against the lawful claim and demand of him, the said Beverly Roy and his heirs, and all and every other person or persons whatsoever, will warrant and forever defend by these presents.

In witness whereof, the said Beverly Roy hath hereunto set his hand, and affixed his seal, the day and year above written. BEVERLY ROY. [L. S.]

Signed, sealed and delivered in presence of
JAMES BUCHANNON, MARTIN BURKE, LYNE SHACKELFORD.

STATE OF KENTUCKY,
Fayette County, to wit:

Beverly Roy, of the County of King and Queen, in the State of Virginia, this day personally appeared before us, James Morrison and Robert Patterson, magistrates for the said County of Fayette, and acknowledged the within indenture to be his act and deed, and in our presence delivered it as such.

Given under our hands, at Lexington, the eighteenth day of October, 1796.

JAMES MORRISON,
R. PATTERSON.

STATE OF KENTUCKY,
Fayette County, sct.

As clerk of the Court of County aforesaid, I do certify that James Morrison and Robert Patterson, gentlemen, before whom the above mentioned Beverly Roy made acknowledgement of this deed, are and were, at the time of taking the same, justices of the peace in and for the County aforesaid, duly commissioned and qualified to perform all duties to their said office appertaining.

In testimony whereof, I have hereto set my hand, and affixed
[L. S.] the seal of office, this 18th day of October, 1796.

LEE TODD, *Clk.*

Contract—Shackelf'd and Upshaw.

Articles of agreement made and entered into, the tenth day of April, in the year one thousand seven hundred and ninety-seven, between Lyne Shackelford, of the County of King and Queen, of the one part, and Edwin Upshaw, of the County of Essex, of the other part, witnesseth: that the said Lyne Shackelford hath sold to the said Upshaw, one thousand acres of military land, lying on Poages creek, in the State of Kentucky, surveyed for Javin Miller, and also seven hundred acres of military land, lying in the territory north-west of the Ohio river, being part of one thousand acres of land surveyed for Beverly Roy, and granted to him by patent bearing date the eleventh day of December, in the year one thousand seven hundred and eighty-nine, for the sum of six hundred and fifty pounds, current money of Virginia, three hundred pounds whereof to be paid on or before the fifteenth day next month, and the balance to be paid on or before the first day of September next; and the said Shackelford doth hereby oblige himself to assign or cause to be legally assigned unto the said Upshaw, the plat and certificate of survey of the said one thousand acres of land surveyed for Javin Miller, on or before the twentieth day of July next, and to give to the said Upshaw an obligation to warrant

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to him the said one thousand acres of land, against the claim of all persons whatsoever; and the said Shackelford doth further oblige himself to make or cause to made, a good and sufficient deed to convey the said seven hundred acres of land unto the said Upshaw, in fee simple, and to warrant the same against the claim of all persons whatsoever. And the said Shackelford doth further agree, that if the said one thousand acres of land, lying on Poages creek, shall not be worth on the twentieth day of July next, in the State of Kentucky, nine shillings an acre, according to the current price of such land, in the opinion of Col. Richard C. Anderson and Major William Croghan, he will take back the said land from the said Upshaw, and return him the purchase money, with legal interest from the time the same may have been received from him; and the said Shackelford also agrees, that if the said seven hundred acres of land shall not be worth on the same day last mentioned, and according to the same mode of valuation, fourteen shillings an acre, he will take back the said seven hundred acres of land, and return the purchase money, with interest from the time the same may have been received from the said Upshaw, estimating the purchase money of the one thousand acres of land at three hundred pounds, and the seven hundred acres at three hundred and fifty pounds; and the said Upshaw, on his part, doth agree to pay the said three hundred pounds at the time herein before mentioned, and to give his bond for the sum of three hundred and fifty pounds, to the said Shackelford, payable on or before the first day of September next.

In witness whereof, the said Lyne Shackelford and Edwin Upshaw have hereunto set their hands and seals, the day and year before written.

LYNE SHACKELFORD, [L. S.]
E. UPSHAW. [L. S.]

Sealed and delivered in presence of
BENJ. HOOMES,
GEORGE SHACKELFORD.

Rec'd, the 16th day of April, 1797, of Mr. Edwin Upshaw, an order on Mr. Proudfet, for two hundred and fifty dollars, and an order on him for Messrs. Stone Hunter, of Norfolk, bill for seventy pounds, which, when paid, is in part of three hundred pounds; also, rec'd fifty-five pounds, in part of the same.

LYNE SHACKELFORD.

Test:
THOMAS BLAND.

Rec'd, the 17th July, 1797, of Mr. Edwin Upshaw, one hundred pounds sixteen shillings and eight pence, being the sum of one hundred pounds which became due upon account of the within, the 15th day of May, with interest thereon from that date until the present time.

LYNE SHACKELFORD.

Whereas, since the date of the within, the said Lyne Shackelford hath, with the consent of the said Upshaw, sold the within mentioned seven hundred acres of land to Philip Buckner, of Kentucky, for four hundred and twenty pounds, which is still due from the said Buckner, it is now agreed between the said Shackelford and Upshaw, that the said Shackelford shall assign over to the said Upshaw, the contract made with the said Buckner, for the said land, and give the said Upshaw full power to receive from the said Buckner the said sum of money, with interest at 5 per cent., from the 1st December, 1797, and after receiving the said sum of money and interest, the said Upshaw, to whom the said land had been conveyed, is to convey the same to the said Buckner. But if, upon application, the said Buckner does not pay the said sum of money and interest, the said Upshaw is immediately to take proper steps to have the land sold to raise the money and interest. The said Upshaw agrees to execute his bond to the said Shackelford, for four hundred pounds, payable the 1st Jan'y next, in full discharge of the written agreement.

Witness our hands and seals, the 18th April, 1801.

LYNE SHACKELFORD, [L. S.]
EDWIN UPSHAW. [L. S.]

Test:

BEVERLY ROBINSON,
THO'S GARNETT.

This paper annexed, by being sealed to the above, before attested.

BEVERLY ROBINSON,
THO'S GARNETT.

Copies, test:

WM. W. HERRING, *C. C.*"

Agreement—Shackelford and Buckner.

Articles of agreement made and entered into, the sixteenth day of November, in the year one thousand seven hundred and ninety-seven, between Lyne Shackelford, of the County of King and Queen, in the State of Virginia, of the one part, and Philip Buckner, of the County of Bracken, in the State of Kentucky, of the other part, witnesseth: that for and in consideration of the sum of one thousand and twenty pounds, current money of Virginia, to be paid by the said Philip Buckner to the said Lyne Shackelford, as hereinafter expressed, he, the said Lyne Shackelford hath bargained and sold unto the said Philip Buckner, one thousand acres of military land, No. 1080, surveyed for Javin Miller, in the District set apart for the officers and soldiers of the Virginia line of the late continental army, on the north-west side of the Ohio river, beginning at a gum and two small ashes, east corner to Alexander

Parker's survey, No. 834, and south corner to Benjamin Moseley's survey, No. 1102, running with Mosely's line, N. 45 E. 500 poles, to a walnut, lynn and mulberry, east corner to Moseley, thence S. 45 E. 320 poles, to three ashes, thence S. 45 W. 500 poles, to a walnut and cherry, thence N. 45 W. 320 poles, to the beginning; and also, seven hundred acres of military land, lying in the same district, being part of one thousand acres, No. 1064, surveyed for Beverly Roy, three hundred acres of which one thousand acres, have been heretofore sold to William Buchannon.

And the said Philip Buckner, on his part, agrees to pay the said one thousand and twenty pounds as follows: he is to assign to the said Shackelford, Richard C. Anderson's bond for six hundred and seventy-three pounds six shillings and two pence, due the first day of January next, out of which the said Shackelford is to repay to the said Buckner seventy-three pounds six shillings and two pence.

And whereas, the said Philip Buckner hath lately directed a suit to be commenced in the federal court held in the city of Richmond, upon a bond due from Reuben Couts to the said Buckner, for the sum of three hundred pounds, with a credit endorsed of fifty pounds, the said Shackelford agrees to wait for so much of the said one thousand and twenty pounds as shall be the amount of the said Coutts' bond, until judgment can be obtained thereon, upon the said Buckner's giving an order in writing, directing the attorney prosecuting the suit to pay the amount of the judgment, when recovered, to the said Shackelford. But if the money due upon the said bond cannot be obtained from the said Coutts, then the said Buckner is to pay the amount thereof to the said Shackelford, and for the balance of the one thousand and twenty pounds before mentioned, after deducting the six hundred pounds to be paid in Richard C. Anderson's bond, and the amount of Reuben Coutts' bond, the said Shackelford agrees to wait until the said Buckner shall have sold the one thousand seven hundred acres of land hereinbefore mentioned, provided such sale shall be made before the first day of January, 1799, at which time the said Buckner is to pay the said balance to the said Shackelford, unless the land shall be sold sooner; and if it is, the balance is to be payable whenever such sale shall be made.

And the said Shackelford, on his part, doth further agree, that he will procure a patent for the said one thousand acres of land hereinbefore mentioned, and that he will convey, or cause to be legally conveyed, the said one thousand acres of land, and seven hundred acres of land, unto the said Philip Buckner, his heirs and assigns, forever, free from the claim or claims of all and every other person or persons whatsoever.

In witness whereof, the said Lyne Shackelford and Philip Buck-

ner have hereunto set their hands and seals, the day and year above written.

LYNE SHACKELFORD, [L. S.]
PHILIP BUCKNER. [L. S.]

Sealed and delivered in presence of
NATH'L. PATTERSON,
DICK'N. MORRIS,
WILLIS HORD.

Rec'd, the 16th Nov., 1797, of Mr. Philip Buckner, Richard C. Anderson's bond assigned to me, as mentioned in the foregoing agreement: also, an order upon Charles Copeland for the amount of Reuben Coutts' bond.

LYNE SHACKELFORD.
Teste: WILLIS HORD.

Deed—Roy to Upshaw.

This indenture, made the twentieth day of July, in the year of our Lord one thousand seven hundred and ninety-seven, between Beverly Roy, of the county of King and Queen, of one part, and Edwin Upshaw, of the county of Essex, of the other part, witnesseth: that the said Beverly Roy, for and in consideration of the sum of three hundred and fifty pounds, current money of Virginia, by the said Edwin Upshaw to him in hand paid, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell, unto the said Edwin Upshaw, his heirs and assigns, a certain tract or parcel of land, containing seven hundred acres, being the residue of one thousand acres, after deducting three hundred acres, sold out of the said thousand acres, to William Buchannon, of the county of Mason, in the State of Kentucky; which said tract of land is situate and lying in the territory north-west of the Ohio river, and was granted to the said Beverly Roy by the Commonwealth of Virginia, by patent bearing date the eleventh day of December, one thousand seven hundred and eighty-nine, and bounded as follows, to wit: beginning at two oaks and a hoop-wood, north corner to John Campbell's survey, No. 866, running south forty-five degrees, west five hundred poles, crossing a branch at two hundred and eighty-six poles, to a white-oak, hickory, and poplar, west corner to William Smith's survey, No. 866; thence north five degrees, west three hundred and twenty poles, to a sugar-tree and two ashes; thence north forty-five degrees, east five hundred poles, crossing a branch at three hundred and twelve poles, to a sugar-tree and two dog-woods; thence south forty-five degrees, east three hundred and twenty poles, to the beginning; together with all and singular the appurtenances thereunto belonging, or in any wise appertain-

ing, and the reversion and reversions, remainder and remainders, rents, issues, and profits, out of any part and parts thereof. To have and to hold the said seven hundred acres of land, with all and singular its appurtenances, unto the said Edwin Upshaw, his heirs and assigns, forever.

And the said Beverly Roy, for himself and his heirs, the said tract of land, with its appurtenances, unto the said Edwin Upshaw, his heirs and assigns, free from the claim or claims of him, the said Beverly Roy, and his heirs, and all and every other person or persons whatsoever, shall, will, and do warrant, and forever defend, by these presents.

In witness whereof, the said Beverly Roy hath hereunto set his hand and seal, the day and year first above written.

(Signed,) BEVERLY ROY. [L. S.]

Sealed and delivered in the presence of
PHIL. TALIAFERRO,
W. DUDLEY,
JNO. TRUNKS.

COMMONWEALTH OF VIRGINIA,
King & Queen County, to wit:

This day Beverly Roy appeared before us, Philip Taliaferro and William Dudley, two of the commonwealth justices of the peace for the county aforesaid, and acknowledged the within indenture to be his act and deed.

Given under our hands the twentieth day of July, 1797.

(Signed,) PHIL. TALIAFERRO,
W. DUDLEY.

VIRGINIA,
King & Queen County, to wit:

I, Robert Pollard, clerk of the court of the said county of King & Queen, do hereby certify that Philip Taliaferro and William Dudley, gentlemen, at the time of signing the above certificate, were, and now are, justices of the peace for this commonwealth, in the county aforesaid, to which certificate due credit ought to be given.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said county, this 21st day of July, 1797, in the 22d year of the commonwealth.

(Signed,) ROBERT POLLARD. [L. S.]

General Land Office, 18th Sept., 1828.

I do hereby certify, that the foregoing is a correct copy of the original, filed in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

GEO. GRAHAM, [L. S.]
Commissioner.

Deed.—Roy to Upshaw.

This indenture, made the twentieth day of July, in the year of our Lord one thousand seven hundred and ninety-seven, between Beverly Roy, of the county of King & Queen, of one part, and Edwin Upshaw, of the county of Essex, of the other part, witnesseth; that the said Beverly Roy, for and in consideration of the sum of three hundred and fifty pounds, current money of Virginia, by the said Edwin Upshaw to him in hand paid, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell, unto the said Edwin Upshaw, his heirs and assigns, a certain tract or parcel of land containing seven hundred acres, being the residue of one thousand acres, after deducting three hundred acres, sold out of the said thousand acres to William Buchannon, of the county of Mason, in the State of Kentucky; which said tract of land is situate and lying in the territory north-west of the river Ohio, and was granted to the said Beverly Roy by the Commonwealth of Virginia, by patent bearing date the eleventh day of December, one thousand seven hundred and eighty-nine, and bounded as follows, to wit: beginning at two ashes, hoop-wood, north corner to John Campbell's survey, No. 866, running south 45 degrees, west five hundred poles, crossing a branch at two hundred and eighty-six poles, to a white-oak, hickory, and poplar, west corner to William Smith's survey No. 866; thence north five degrees, west three hundred and twenty poles, to a sugar-tree and two ashes; thence north forty-five degrees, east five hundred poles, crossing a branch at three hundred and twelve poles, to a sugar-tree and two dog-woods; thence south forty-five degrees, east three hundred and twenty poles, to the beginning: together with all and singular the appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits, and of every part and parcel thereof; to have and to hold the said seven hundred acres of land, with all and singular its appurtenances, unto the said Edwin Upshaw, his heirs and assigns forever; and the said Beverly Roy, for himself and his heirs, the said tract of land, with its appurtenances, unto the said Edwin Upshaw, his heirs and assigns, free from the claim or claims of him, the said Beverly Roy, and his heirs, and all and every other person or persons whomsoever, shall, will, and do warrant and forever defend, by these presents.

In witness whereof, the said Beverly Roy hath hereunto set his hand and seal, the day and year first above written.

(Signed) BEVERLY ROY. [L. S.]

Sealed and delivered in the presence of

PHIL. TALIAFERRO,
W. DUDLEY,
JNO. TRUNKS.

COMMONWEALTH OF VIRGINIA,
King & Queen County to wit :

This day Beverly Roy appeared before us, Philip Taliaferro and William Dudley, two of the Commonwealth Justices of the Peace for the county aforesaid, and acknowledged the within indenture to be his act and deed.

Given under our hands, the twentieth day of July, 1797.

PHIL. TALIAFERRO,
W. DUDLEY.

VIRGINIA, *King & Queen County, to wit :*

I, Robert Pollard, clerk of the court of the said county of King and Queen, do hereby certify, that Philip Taliaferro and William Dudley, gentlemen, at the time of signing the above certificate, were and now are justices of the peace for this Commonwealth, in the county aforesaid, to which certificate due credit ought to be given.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said county, this 21st day of July, 1797, in the 22d year of the Commonwealth.

ROBERT POLLARD. [L. S.]

Recorded 9th of April, 1799.

THE STATE OF OHIO, *Hamilton County, ss :*

I, Griffin Yeatman, recorder within and for the county aforesaid, do hereby certify, that the foregoing transcript of deed from Beverly Roy to Edwin Upshaw, is correctly copied from book C, No. 1, pages 83 & 84, records of deeds of county aforesaid.

In testimony whereof, I have hereunto set my hand and [L. S.] seal of office, this 27th day of November, A. D. 1835.

GRIFFIN YEATMAN,
Recorder, Ham. County, Ohio.

Deed—Roy to Upshaw.

This indenture, made the twentieth day of July, in the year of our Lord one thousand seven hundred and ninety-seven, between

Beverly Roy, of the county of King and Queen, of the one part, and Edwin Upshaw, of the county Essex, of the other part, witnesseth: that the said Beverly Roy, for and in consideration of the sum of three hundred and fifty pounds, current money of Virginia, by the said Edwin Upshaw to him in hand paid, the receipt whereof is hereby acknowledged, hath granted, bargained and sold, and by these presents, doth grant, bargain and sell unto the said Edwin Upshaw, his heirs and assigns, a certain tract or parcel of land containing seven hundred acres, being the residue of one thousand acres, after deducting three hundred acres, sold out of the said thousand acres to William Buchannon, of the county of Mason, in the State of Kentucky, which said tract of land is situated and lying in the territory northwest of the river Ohio, and was granted to the said Beverly Roy, by the Commonwealth of Virginia, by patent bearing date the eleventh day of December, one thousand seven hundred and eighty-nine, and bounded as follows, to wit, beginning at two ashes, hoop wood, north corner to John Campbell's survey, No. 866; running south forty-five degrees, west five hundred poles, crossing a branch at two hundred and eighty-six poles, to a white oak, hickory and poplar, west corner to William Smith's survey, No. 866; thence north five degrees, west three hundred and twenty poles, to a sugar tree and two ashes; thence north forty-five degrees, east five hundred poles, crossing a branch at three hundred and twelve poles, to a sugar tree and two dog-woods; thence south forty-five degrees, east three hundred and twenty poles, to the beginning. Together with all and singular, the appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits, and of every part and parcel thereof. To have and to hold the said seven hundred acres of land with all and singular its appurtenances, unto the said Edwin Upshaw, his heirs and assigns forever; and the said Beverly Roy, for himself and his heirs, the said tract of land with its appurtenances, unto the said Edwin Upshaw, his heirs and assigns, free from the claim or claims of him, the said Beverly Roy, his heirs and assigns, and all and every other person or persons whatsoever, shall, will and do warrant and forever defend, by these presents.

In witness whereof, the said Beverly Roy hath hereunto set his hand and seal, the day and year first above written. [L. S.]

BEVERLY ROY.

Sealed and delivered in the presence of
PHIL. TALIAFERRO,
W. DUDLEY,
JNO. TRUNKS.

COMMONWEALTH OF VIRGINIA, *King and Queen county, ss.*

This day, Beverly Roy personally appeared before us, Philip Taliaferro and William Dudley, two of the Commonwealth's justices

of the peace for the county aforesaid, and acknowledged the within indenture to be his act and deed.

Given under our hands the twentieth day of July, 1797.

PHILIP TALIAFERRO.
W. DUDLEY.

VIRGINIA, *King and Queen County, to wit:*

I, Robert Pollard, clerk of the Court of the said county of King and Queen, do hereby certify, that Philip Taliaferro and William Dudley, gentlemen, at the time of signing the above certificate, were and now are justices of the peace for this Commonwealth, in the county aforesaid, to which certificate due credit ought to be given.

In testimony whereof, I have hereunto set my hand,
[L. S.] and affixed the seal of said county, this 21st day of July, 1797, in the 22d year of the Commonwealth.

ROBERT POLLARD.

Recorded 9th April, 1799.

Hamilton County, ss.

The foregoing transcript is correctly copied from book C, No. 1, page 83, Ham. county records.

Witness my hand and seal of office, this 17 May, 1837.
[L. S.] GRIFFIN YEATMAN, *County Recorder.*

Letter from Shackelford to Buckner.

Virginia, Mathews County, 29th April, 1800.

Dear Sir,—I was very much surprised some time ago, when I was informed that you had sold a thousand acres of land, belonging to Mr. Charles Copeland, in consequence of a memo. which I gave you at your particular request. That memo. mentions that I would see Mr. Copeland, and afterward write to you. I did see Mr. Copeland before I left Kentucky, and finding that he was not disposed to sell the land, I wrote to you from Danville not to do any thing in the business, which letter must have reached you before you made any contract. I am very sorry that I ever gave you such a memo., and flatter myself that if you have done any thing in consequence of it, you will immediately cancel the contract, which you know you cannot carry into effect, and do every thing that is right to give Mr. Copeland entire satisfaction. I am also informed that you have contracted for Capt. Roy's land, lying near Mr. Copeland; if so, my brother George, who will hand you this, is authorized by Capt. Roy to receive the money from the purchaser, and make a conveyance of the land. A suit has been instituted on Coutt's bond, and judgment will be obtained next month. But he says he intends to get an injunction. I have not yet got a patent for the 1000

acres of Miller's land sold you, owing to Mr. Terrel not being at home to assign the platt, when I was in Kentucky. My brother is to get it done, and then I will, by the first oppertunity, get a patent, and shall then be ready to make you a title upon receiving the balance of the purchase money.

I am, dear sir, your ob. serv.,

LYNE SHACKELFORD.

Ca. Sa.

BUCKNER *vs.* COUTTS.

The President of the United States of America, to the Marshal of the Eastern Virginia District, greeting:

You are hereby commanded to take Reuben Coutts, if he be found within your district, and himself safely keep, so that you have his body before the judges of the Court of the United States for the Fourth Circuit, in the Eastern District of Virginia, at Richmond, on the fifth day of December next, to satisfy Philip Buckner, six hundred pounds of the value of two thousand dollars, which the said Philip Buckner hath, late in the Court of the United States for the middle circuit, in the Virginia District, recovered against the said Reuben Coutts for debt; also nineteen dollars and thirty cents, which in the same court were adjudged to the said Philip Buckner, for his costs, by him in that behalf expended, whereof the said Reuben Coutts is convict, as appears of record; and have then there this writ.

Witness, Philip Barton Key, Esq., Chief Judge of the said Court at Richmond, aforesaid, this 20th day of June, in the year 1801, and in the 25th year of the independence of the United States.

WILLIAM MARSHALL, *Clk.*

A copy—Teste:

WILLIAM MARSHALL, *Clk.*

"Memorandum.

The within execution may be discharged by the payment of eight hundred and thirty-three dollars, thirty-three cents, with interest thereon, after the rate of five per centum per annum from the nineteenth day of May, seventeen hundred and ninety-one, bl. payment and the costs.

WILLIAM MARSHALL, *Clk.*

A copy—Teste:

WILLIAM MARSHALL, *Clk.*"

Not found.

BEN. MOSBY, *D. Marshal,*
For JOSEPH SCOTT, *M. E. V. D.*

Versailles, Ap'l 27th, 1814.

Capt. Buckner will recollect that I, G. T. Cotton, executor of John O'Bannon, dec'd, have copies of the papers between himself and Lyne Shackleford, which were transferred by said Shackelford to Edwin Upshaw, on which papers there is now a suit instituted in the Federal Court.

G. T. COTTON.

And further, that I have received from Capt. Buckner, this day, two receipts for money paid to Maj. O'Bannon, on account of the above contract of $100 each, one for $20 and one for $10; and that I have a letter from s'd Buckner to George Horine, on which there has been $40 paid to said O'Bannon.

G. T. COTTON, *Ex'r of*
JOHN O'BANNON.

11*th April*, 1819.

PHILIP BUCKNER,

To JAMES HUDERS, Dr.

	To 34 gallons whiskey at 2 a 6 per gal.	$14 17
25th March,	To 36 do. do. at 2 a 6 -	15 00
17th April,	To 32 do. do. at 2 a 6 -	13 32½
7 May,	To 36 do. do. at 2 a 6 -	15 00
2d June,	To 104 gal. whiskey by G. Morrow 2 a 6	43 32½
	To cash returned, $10 - -	10 00
		$110 82½

JAMES HUDERS,

To PHILIP BUCKNER, Dr.

11th Ap'l, 1819,	To cash paid, - - -	$13 00
12th March,	To cash paid, - - -	15 00
25 do.	To cash do. - - -	25 00
7 May,	To cash, - - -	12 00
		16 00
20th May,	To cash by D. Morris, $1 - -	1 00
	To Hugh Call's Bond, - -	50 00
	To Wm. Chicks' Bond for -	50 00
		$182 00
		110 82½
		$71 18½

Letters from Beverly Roy to Philip Buckner—3 letters, Lyne Shackelford to P. Buckner—agreement between L. Shackelford and Philip Buckner—letter of attorney, same to same—letter, J. Brown

to Philip Buckner:—the above papers I have in my possession, received from among the papers of P. Buckner, dec'd, Oct. 24th, 1830. JOHN PAYNE.

Deed—Chamberlayne to Buckner.

This indenture, made this sixth day of May, in the year one thousand eight hundred and three, between William Chamberlayne, of the county of New Kent, in the State of Virginia, of the one part, and Philip Buckner, of the county of Bracken, in the State of Kentucky, of the other part, witnesseth: that for and in consideration of the sum of six hundred pounds current money of Kentucky, by the said Philip Buckner to the said William Chamberlayne in hand paid, the receipt whereof is hereby acknowledged, he, the said William Chamberlayne, hath granted, bargained and sold, and by these presents doth grant, bargain and sell unto the said Philip Buckner, his heirs and assigns, a certain tract of land lying in the State of Ohio, containing one thousand acres, granted to the said William Chamberlayne by the United States, by patent under the hand of Thomas Jefferson, Esq., President of the United States, dated the sixth day of January, in the year 1802, which tract of land is bounded as follows: beginning at a gum and two small ashes, east corner to Alexander Parker's survey, No. 834, and south corner to Benjamin Moseley's survey, No. 1102, running with Moseley's line north, forty-five degrees east, five hundred poles, crossing a branch at two hundred and eighty poles, one at three hundred and fourteen, and one at four hundred and two poles, to a walnut, lynn and mulberry, east corner to Moseley; thence south forty-five degrees east, three hundred and twenty poles, crossing a branch at six poles, to three ashes; thence south forty-five degrees west, five hundred poles, crossing a branch at three hundred and thirty-six poles, one at four hundred and two, and one at four hundred and eighty-seven poles, to a walnut and cherry; thence north forty-five degrees west, three hundred and twenty poles, to the beginning; with all the appurtenances to the said tract belonging or in any way appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of him, the said William Chamberlayne, of, in and to the same: to have and to hold the said tract of land with its appurtenances, unto the said Philip Buckner, his heirs and assigns, forever, free from the claim and demand of all and every other person or persons whatsoever.

In witness whereof, the said William Chamberlayne hath hereunto set his hand and seal, the day and year above written.

WM. CHAMBERLAYNE. [L. S.]

Sealed and delivered in presence of
LYNE SHACKELFORD,
WM. MASSIE,
WILLIAM WILKINSON.

VIRGINIA, NEW KENT, *to wit:*

This day William Chamberlayne personally appeared before us, Joseph Foster and Robert Boyd, two of the Commonwealth's Justices of the Peace for the county aforesaid, and acknowledged the within indenture to be his act and deed, given under our hands, this sixth day of May, 1803.

JOSEPH FOSTER,
ROBERT BOYD.

I do hereby certify, that the above named Joseph Foster and Robert Boyd are acting Justices of the Peace for the county of New Kent, who are duly commissioned and sworn, and that due faith and credit ought to be given to their acts as such.

In testimony whereof, I, William B. Clayton, Clerk of the court of New Kent county, have hereunto set my hand and affixed the seal of the said county, this 6th day of May, one thousand eight hundred and three, and twenty-seventh year of the Commonwealth.

W. B. CLAYTON, *Clk.* [L. S.]

VIRGINIA, NEW KENT, *to wit:*

This day William Chamberlayne personally appeared before us, Joseph Foster and Robert Boyd, two of the Commonwealth's Justices of the Peace for the county aforesaid, and acknowledged the within indenture to be his act and deed, given under our hands this 27th day of March, 1804.

JOS. FOSTER,
ROBERT BOYD.

Recorded 7th June, 1805.

THE STATE OF OHIO, CLERMONT COUNTY, *ss:*

I, Benjamin Morris, Recorder within and for the county of Clermont aforesaid, do hereby certify, that the foregoing deed of conveyance and certificates are a correct copy, taken from the records of said Clermont county, as the same stands recorded in book C, of deeds, &c., pages 281 and 282.

Given under my hand and seal of office, at Batavia, in the county aforesaid, this twenty-seventh day of May, in the year of our Lord one thousand eight hundred and thirty-six. [L. S.]

BENJAMIN MORRIS,
Rec. of Clermont county, Ohio.

Buckner vs. Coutts' representatives—Answer and exhibits.

The answer of Lewis Coutts, executor of Reuben Coutts, to the bill of complaint of Philip Buckner, exhibited against him and

others in the Court of the United States for the fifth circuit, Virginia district. This respondent, now and at all times hereafter, saving and reserving to himself all advantage of exceptions to the many uncertainties, insufficiencies and untruths in the said bill contained, for answer thereto, or unto so much thereof as he is advised is material or necessary for him to make answer unto, he answereth and saith, that as of his own knowledge he knows nothing respecting the merits of the compl'ts claim, but he has understood that his testator always objected to its justice, and therefore refused payment. This respondent hath lately been informed and hopes to prove, that the said Reuben Coutts, in his lifetime, and before the judgment at law was rendered, paid to the said Buckner the full amount of his demand; but whether he does or not, this respondent further saith, that he hath well and truly administered all and singular the goods, chattles and credits of the said Reuben Coutts, at the time of his death, which have come to his hands to be administered, as will more fully and at large appear, by an account thereof, taken by one of the masters in chancery of the Richmond District Court, and to a copy whereof this respondent refers, and prays that the same may be taken as a part of this his answer. This respondent denying all combination, fraud, &c., prays to be hence dismissed with his reasonable costs; without that, that, &c.

CITY OF RICHMOND, *to wit:*

This day personally appeared before me, a magistrate of the aforesaid, Lewis Coutts, executor of R. Coutts, deceased, and made oath to the foregoing answer in due form; given under my hand this 27th day of Nov., 1810.

C. TOMPKINS.

To all to whom these presents shall come, I, Philip Buckner, of the county of Bracken, in the Commonwealth of Kentucky, send greeting:

Know ye, that reposing special trust and confidence in William Marshall, Esq., of the city of Richmond, in the State of Virginia, and for other considerations me thereunto moving, have made, ordained, constituted and appointed, and by these presents do make, ordain, constitute and appoint the said William Marshall my true and lawful attorney, for me and my name, and to my use, to ask for, demand and receive from Reuben Coutts, or his heirs, executors or administrators, or of any person or persons, in trust for him or them, all such sum or sums of money as is now or may hereafter become due, owing or payable to me, in consequence, or by virtue of a judgment obtained in my name against the said Reuben Coutts, in the United States Court for the District or Circuit of Virginia,

holden at the city of Richmond aforesaid; and on receipt thereof or any part thereof, to give receipts or other proper acquittance for the same, or on refusal, to sue, and implead any person or persons legally charged with the payment of the said debt or judgment, and to prosecute the same to recovery in such way as he may think proper; also, one or more attorney or attornies under him to appoint, and at pleasure to revoke, hereby giving him my full power and authority, ratifying and confirming whatever my said attorney shall lawfully do in the premises.

In witness whereof, I have hereunto set my hand and seal, this fourth day of January, anno Domini, 1809.

PHILIP BUCKNER. [L. S.]

Teste:
Date above. WILLIS A. LEE, N. P.

STATE OF KENTUCKY, *Town of Frankfort, sct.*

I, Willis A. Lee, notary public in and for the Commonwealth of Kentucky, and town aforesaid, duly commissioned and qualified according to law, dwelling in the town of Frankfort, do hereby certify, that the within letter of attorney was acknowledged before me, by the within named Philip Buckner, on the day of the date thereof, to be his act and deed, for the purposes therein contained.

In testimony whereof, I have hereunto set my hand
[L. S.] and affixed my seal notarial, the day and year within written.

Att: WILLIS A. LEE, *N. P.*

Attestation, $1 66.

STATE OF KENTUCKY.

I, Charles Scott, governor of the commonwealth aforesaid, do hereby certify, that Willis A. Lee, who attests the certificate above, as notary public for the commonwealth and town aforesaid, was at the time of attesting, and still is the notary public for the Commonwealth of Kentucky, and town of Frankfort, duly commissioned and qualified as such, and to whose certificate full faith and credit is due.

Given under my hand and the seal of the common-
[L. S.] wealth aforesaid, at Frankfort, this 13th day of January, anno Domini 1809, and XVIII year of the C. W.

By the Governor,

C. SCOTT.

J. BLEDSOE, *Sec'y.*

I, Richard Jeffries, clerk of the court of the United States, for the fifth Circuit and Eastern District of Virginia, do hereby certify,

that the foregoing is a true copy of an answer and an exhibit, filed in a suit in chancery, lately depending in the said court, in which Philip Buckner was plaintiff, and the representatives of Reuben Coutts, deceased, were defendants.

In testimony whereof, I hereunto put my name, and affix the seal of the said court, this eighth day of October, in the year one thousand eight hundred and thirty-four.

[L. S.]

R'D. JEFFRIES.

Order of Upshaw on O'Bannon, with the Protest.

Major JOHN O'BANNON:

SIR,—Please to pay Mr. John H. Upshaw, ten days after sight, my first order, not being paid, of this date, the just sum of five hundred pounds, with interest from the fifteenth day of November, one thousand eight hundred and five, until paid, out of my claim in your hands against P. Buckner.

EDWIN UPSHAW.

April 1st, 1807.

Teste: JNO. HAWKINS.

Endorsements.

Presented, but not accepted. Lexington, Ky., July 16th, 1807.
WM. TODD, *N. P.*

1*st of October*, 1807.

I have received of Edwin Upshaw, two hundred and ninety-three pounds, one and nine pence of the within order.

JNO. H. UPSHAW.

STATE OF VIRGINIA,
Essex County, Clerk's Office.

I, James Roy Micon, jr., clerk of the said court, in the State aforesaid, do hereby certify, that the foregoing is a true and exact copy of a bill of exchange, with the endorsements thereon, filed in a suit lately depending in the said court, between John H. Upshaw, plaintiff, and Edwin Upshaw, defendant, in which case the plaintiff obtained a judgment.

In testimony whereof, I have hereunto set my hand and caused the seal of my said office to be hereunto affixed, this 14th day of December, in the 58th year of the Commonwealth.

[L. S.]

JAMES ROY MICON, Jr.,
Clerk.

STATE OF VIRGINIA,
Essex County Court, Clerk's Office.

I, James M. Garnett, presiding justice of the peace of the court of the said county, in the State aforesaid, do hereby certify, that James Roy Micon, jr., whose name is signed to the annexed certificate, is and was at the time of his signing the same, clerk of the said court, duly appointed and qualified as such, according to the laws of the said State, and that full faith and credit are due to all his official acts as such.

In testimony whereof, I have hereunto set my hand and affixed my seal, this 27th day of December, 1833.

JAMES M. GARNETT. [L. S.]

UNITED STATES, *Fifth Circuit,*
Virginia District, to wit:

I, William Marshall, clerk of the court of the United States for the fifth circuit in the Virginia district, do hereby certify, that in a suit formerly prosecuted in the court of the United States, for the middle circuit in the Virginia district, in which Philip Buckner was plaintiff, and Reuben Coutts defendant, in which judgment was obtained, three several writs of capias *capias* ad respondendum issued, two of which were returned not found; and the said Coutts departed this life before the third was returned; that since the said death of the said Coutts, a suit in chancery has been instituted in the court of the United States, for the fifth circuit and Virginia district, against the heirs and devisees of the said Coutts, which is still depending, and in which last mentioned suit there has been no decree, on which to found any execution or other process, to inforce payment of the demand.

[L. S.] Given under my hand and the seal of the said court, this 18th day of November, 1812.

WILLIAM MARSHALL,
Clerk.

Copy of Record.

UPSHAW, *vs.* BUCKNER.

Pleas before the honorable Thomas Todd, judge of the seventh circuit court of the United states of America, in and for the district of Kentucky, held at the capitol, in the town of Frankfort, at the May term, in the year 1815.

Be it remembered, that heretofore, to wit: on the 26th day of February, 1814, came Edwin Upshaw, by his attorney, into the clerk's office of the court aforesaid, and sued out the following writ,

of capias ad respondendum, against Philip Buckner, in a plea of covenant broken, to wit:

The United States of America, to the Marshal of the District of Kentucky, greeting:

[L. S.]

You are hereby commanded to take Philip Buckner, a citizen of the State of Kentucky, if he be found within your bailiwick, and him safely keep, so that you have his body before the judges of our seventh circuit court of the United States of America, in and for the district of Kentucky, at the capitol, in Frankfort, on the first Monday in May next, to answer Edwin Upshaw, a citizen of the State of Virginia, assignee of Lyne Shackelford, of an action of covenant broken; damage, three thousand dollars; and have then there this writ.

In testimony whereof, John Marshal, Esq., chief justice of the said United States, hath caused the seal of our said court to be hereunto affixed, this 26th day of February, A. D. 1814, and in the 38th year of our Independence.

[L. S.]

Attest: JOHN H. HANNA,
C. C. C. K. D.

Memorandum.

This is an action of covenant broken; no bail is required.
ADAMS, *P. Q.*

Marshal's return, to wit:

Executed on the 14th March, 1814.
FRANCIS H. WATKINS, *Depty.*, for
ROBT. CROCKETT, *M. K. D.*

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of February, and year 1815, (until which time this cause was continued on the rule docket,) came again the plaintiff, by his attorney, and filed the following declaration herein, to wit:

UNITED STATES OF AMERICA,
Seventh Circuit, District of Kentucky, sct.

Edwin Upshaw, a citizen of the State of Virginia, ass'ee of Lyne Shackelford, complains of Philip Buckner, a citizen of the State of Kentucky, in custody, &c., of a plea of covenant broken, for that whereas, on the 16th day of November, in the year 1797, within the circuit and district aforesaid, the said Philip Buckner and Lyne Shackelford entered into certain articles of agreement, signed and

sealed with their own proper hands and seals, the date whereof is the day and year aforesaid, and which to the court is now here shewn, in the words and figures, (viz:) "Articles of agreement, made and entered into the 16th day of November, in the year one thousand seven hundred and ninety-seven, between Lyne Shackelford, of the county of King and Queen, in the State of Virginia, of the one part, and Philip Buckner, of the county of Bracken, in the State of Kentucky, of the other part, witnesseth: that for and in consideration of the sum of one thousand and twenty pounds, current money of Virginia, to be paid by the said Philip Buckner to the said Lyne Shackelford, as hereinafter expressed; he, the said Lyne Shackelford, hath bargained and sold unto the said Philip Buckner, one thousand acres of military land, No. 1,080, surveyed for Javin Miller, in the district set apart for the officers and soldiers of the Virginia line, of the late continental army, on the northwest side of the Ohio river, beginning at a gum and two small oaks, east corner to Alexander Parker's survey, No. 834, and south corner to Benjamin Moseley's survey No. 1,102, running with Moseley's line S. 45 E., 320 poles, to three ashes; thence S. 45 W., 500 poles, to a walnut and cherry; thence N. 45 W., 320 poles, to the beginning; and also seven hundred acres of military land, lying in the same district, being part of one thousand acres, No. 1,064, surveyed for Beverly Roy, three hundred acres of which one thousand acres have been heretofore sold to William Buchannon; and the said Philip Buckner on his part agrees to pay the one thousand and twenty pounds, as follows: he is to assign to the said Shackelford, Richard C. Anderson's bond for six hundred and seventy-three pounds six shillings and two pence, due the first day of January next, out of which the said Shackelford is to repay to the said Buckner seventy-three pounds six shillings and two pence. And whereas, the said Philip Buckner hath lately directed a suit to be commenced in the federal court, held in the City of Richmond, Virginia, upon a bond due from Reuben Coutts to said Buckner, for the sum of three hundred pounds, with a credit endorsed for fifty pounds; the said Shackelford agrees to wait for so much of the said one thousand and twenty pounds, as shall be the amount of the said Coutts' bond, until judgment can be obtained thereon, upon the said Buckner giving an order in writing, directing the attorney prosecuting the suit, to pay the amount of the judgment, when recovered, to the said Shackelford; but if the money due upon the said bond cannot be obtained from the said Coutts, then the said Buckner is to pay the amount thereof to the said Shackelford; and for the balance of the one thousand and twenty pounds, before mentioned, after deducting the six hundred pounds to be paid in Richard C. Anderson's bond, and the amount of Reuben Coutts' bond, the said Shackelford agrees to wait until the said Buckner shall have sold the one thousand seven hundred acres of land, herein before mentioned, provided such sale shall

be made before the first day of January, 1799, at which time the said Buckner is to pay the said balance to the said Shackelford, unless the land shall be sold sooner; and if it is, the said balance is to be payable whenever such sale shall be made; and the said Shackelford on his part doth further agree, that he will procure a patent for the said one thousand acres of land herein before mentioned, and that he will convey or cause to be legally conveyed the said one thousand acres of land, and seven hundred acres of land unto the said Philip Buckner, his heirs and assigns, forever, free from the claim or claims of all and every other person or persons whatsoever.

In witness whereof, the said Lyne Shackleford and Philip Buckner have hereunto set their hands and seals, the day and year above written.

And whereas, afterwards, to wit, on the 16th day of May, 1803, in the circuit and district aforesaid, the said covenant being then and there *being* in full force and unsatisfied, by the said Buckner, the said Lyne Shackleford assigned and transferred all his right and interest in and to the said contract to the plaintiff, and authorised him to receive from the said Buckner the balance due upon the same, then and there amounting to five hundred and thirty pounds nine shillings, of which assignment and transfer the said Buckner then and there had notice; and the plaintiff avers, that the said Shackleford hath faithfully kept and performed all and singular the covenants to be by him kept and performed, according to the said writing obligatory. Yet the said Philip Buckner hath not kept and performed all, or either of the covenants in the said writing obligatory, to be by him kept and performed; but has altogether broken the said covenant in this, to wit: he did not pay to the said Lyne Shackleford, before the date of the assignment aforesaid, the said sum of one thousand and twenty pounds, according to his covenant aforesaid; nor has he paid the same the plaintiff since the said assignment, according to his said covenant; and the said defendant has also broken the said covenant in this, to wit: he did not, before the assignment aforesaid, assign to the said Shackleford Richard C. Anderson's bond for six hundred and seventy-three pounds six shillings and two pence, due the first day of January next ensuing the date of said covenant; nor has he assigned the same to the plaintiff since the date of the assignment of said covenant; and in this, to wit: the said Buckner did not, before the assignment of the said covenant to the plaintiff, give to the said Shackleford an order in writing, directing the attorney prosecuting the suit aforesaid of the said Buckner against Reuben Coutts, in the Federal Court in the city of Richmond, in Virginia, upon a bond due from Reuben Coutts to the said Buckner, for three hundred pounds, with a credit endorsed for fifty pounds, to pay the amount of the judgment, when recovered, to said Shackleford;

nor *has* the said defendants ever given the said order to the plaintiff since the date of the assignment of the covenant aforesaid; and the plaintiff avers that the said Shackleford did not, before the assignment of the covenant aforesaid, obtain from the said Coutts the amount due from the said Buckner upon the aforesaid bond of him, the said Coutts; nor has the plaintiff obtained the amount thereof, or any part thereof, from the said Coutts, since the assignment of the said covenant; nor did the said Buckner pay the same to the said Shackleford before the assignment of the said covenant; nor has he paid the same, or any part thereof, to the plaintiff, since the assignment of the said covenant; and the said defendant hath broken the said covenant in this, also, to wit: he did not pay to the said Shackleford, the first day of January, 1799, nor at any time before the said assignment, the balance of the one thousand and twenty pounds, after deducting therefrom the six hundred pounds, to be paid in Richard C. Anderson's bond, and the amount of Reuben Coutts' bond, which balance, the plaintiff avers, amounts to one hundred and seventy pounds; nor did the said defendant pay the said Shackleford the said balance, after deducting the amount of the said bonds, at any time before the first day of January, 1799, or before the date of the said assignment; nor has he paid the said balance to the plaintiff, or any part thereof, since the date of the said assignment; by reason of which several breaches and non-performances aforesaid, the said plaintiff hath sustained damage to the amount of three thousand dollars, and therefore he sues, &c.

ADAMS, *P. Q.*

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of March, and year 1815, until which time this cause was continued on the rule docket, came the plaintiff aforesaid, by his attorney, and gave the defendant a rule to file his plea, or demurrer to the plaintiff's declaration.

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of April, and year 1815, until which time this cause was continued on the rule docket, came the plaintiff aforesaid, by his attorney, and the defendant still failing to appear, and plead or demur to the plaintiff's declaration, although ruled so to do: it is, on motion of the said plaintiff, by his attorney, ruled that the plaintiff recover of the said defendant the demand, in the declaration mentioned, together with such damages as he has sustained in the premises; but because those damages are unknown, it is commanded the marshal that he cause to come here at the next term of this court, twelve good and lawful men, to enquire of the same.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1815, came the parties aforesaid, by their attornies; and, on motion of the said defendant, it is ordered that the judg-

ment and writ of enquiry herein awarded against him in the clerk's office, be set aside; and the said defendant, by his attorney, comes and craves oyer of the writing obligatory in the declaration mentioned, which is read to him: "Articles of agreement made and entered into the 16th day of November, in the one thousand seven hundred and ninety-seven, between Lyne Shackleford, of the county of King and Queen, in the State of Virginia, of one part, and Philip Buckner, of the county of Bracken, in the State of Kentucky, of the other part, witnesseth: that for and in consideration of the sum of one thousand and twenty pounds, current money of Virginia, to be paid by the said Philip Buckner to the said Lyne Shackleford, as hereinafter expressed, he, the said Lyne Shackleford, hath bargained and sold unto the said Philip Buckner one thousand acres of military land, No. 1080, surveyed for Javin Miller, in the district set apart for the officers and soldiers of the Virginia line of the late continental army, on the north-west side of the Ohio river, beginning at a gum and two small ashes, east corner to Alexander Parker's survey, No. 834; and corner to Benjamin Moseley's survey, No. 1102; running with Moseley's line N. 45 E., 500 poles, to a walnut, lynn and mulberry; east corner to Moseley; thence S. 45 E., 320 poles, to three ashes; thence S. 45 W., 500 poles, to a walnut and cherry; thence N. 45 W., 320 poles, to the beginning. And also seven hundred acres of military land, lying in the same district, being part of one thousand acres, No. 1064, surveyed for Beverly Roy, three hundred acres of which one thousand acres have been heretofore sold to William Buchannon; and the said Philip Buckner, on his part, agrees to pay the said one thousand and twenty pounds, as follows: he is to assign to the said Shackleford, Richard C. Anderson's bond for six hundred and seventy-three pounds six shillings and two pence, due the first day of January next, out of which the said Shackleford is to repay to the said Buckner seventy-three pounds six shillings and two pence.

And, whereas, the said Philip Buckner hath lately directed a suit to be commenced in the Federal Court, held in the city of Richmond, in Virginia, upon a bond due from Reuben Coutts to said Buckner, for the sum of three hundred pounds, with a credit endorsed of fifty pounds, the said Shackleford agrees to wait for so much of the said one thousand and twenty pounds as shall be the amount of the said Coutts' bond, until judgment can be obtained thereon, upon the said Buckner's giving an order in writing, directing the attorney prosecuting the suit to pay the amount of the judgment, when recovered, to the said Shackelford; but if the money due upon the said bond cannot be obtained from the said Coutts, then the said Buckner is to pay the amount thereof to the said Shackelford; and for the balance of the one thousand and twenty pounds, before mentioned, after deducting the six hundred pounds to be paid in Richard C. Anderson's bond, and the amount of Reuben Coutts'

bond, the said Shackelford agrees to wait until the said Buckner shall have sold the one thousand seven hundred acres of land, hereinbefore mentioned, provided such sale shall be made before the first day of January, 1799, at which time the said Buckner is to pay the said balance to the said Shackelford, unless the land shall be sold sooner; and if it is, the said balance is to be payable whenever such sale shall be made; and the said Shackelford, on his part, doth further agree, that he will procure a patent for said one thousand acres of land hereinbefore mentioned, and that he will convey, or cause to be legally conveyed, the said one thousand acres of land, and seven hundred acres of land, unto the said Philip Buckner, his heirs and assigns, forever, free from the claim or claims of all and every other person or persons whatsoever.

In witness whereof, the said Lyne Shackelford and Philip Buckner have hereunto set their hands and seals, the day and year above written.

LYNE SHACKELFORD, [L. S.]
PHILIP BUCKNER. [L. S.]

Sealed and delivered in the presence of
NATH'L PATTERSON,
DICK'N MORRIS,
WILLIS HORD.

Rec'd the 16th of Nov., 1797, of Lyne Shackelford, seventy-three pounds six shillings and two pence, mentioned in the foregoing agreement, to be repaid out of Richard C. Anderson's bond.

PHILIP BUCKNER.
Teste: WILLIS HORD.

1803, *May* 16*th*.

I assign and transfer all my right and interest in and to the within contract to Edwin Upshaw, and authorize him to receive from the within named Philip Buckner, the balance due upon the same, amounting this day to five hundred and thirty pounds nine shillings.

LYNE SHACKELFORD.
Teste: JOHN ROANE.

April 10*th*, 1805.

Rec'd of P. Buckner $100, part of the within, as per receipt of same date.

J. O. B.

April 18*th*, 1806.

Rec'd of Philip Buckner $100, in part of the within, as per rec't of this date.

J. O. B.

Whereupon he saith, the plaintiff his action aforesaid against him ought not to have and maintain, because he saith, that the said declaration, and the matters therein contained, are not sufficient in law to support his action aforesaid, to which he hath no occasion, nor is he bound by the laws of the land to answer, and this he is ready to verify, &c.; wherefore he prays judgment, &c.

HARDIN, *for Defendant.*

And the plaintiff saith, his said declaration, and the matters therein contained, are sufficient to support his action aforesaid. Wherefore, and for as much as the said plaintiff hath in no respect denied the same, he prays judgment, &c.

And afterwards, to wit, on a subsequent day of the term and year last aforesaid, to wit, the May term, 1815, on the 25th day of May, the court being now sufficiently advised of and concerning the demurrer, do adjudge that the same is sufficient in law to bar and preclude the plaintiff from having and maintaining his action aforesaid, and that the defendant go hence and recover of the plaintiff his costs herein expended.

UNITED STATES OF AMERICA,
7 *Circuit Court, Kentucky District, sct.*

I, John H. Hanna, clerk of the Seventh Circuit Court of the United States of America, in and for the District of Kentucky, do hereby certify, that the foregoing pages contain a full, true and complete transcript of the record and proceedings in the cause therein mentioned.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court, this 11th [L. S.] day of November, in the year of our Lord one thousand eight hundred and thirty, and in the 55th year of our independence.

JNO. H. HANNA.

Fee for this copy, $4 00.

Deed—Roy and Wife to Upshaw.

This indenture, made this 24th day of August, in the year one thousand eight hundred and seventeen, between Beverly Roy and Janet, his wife, of the County of King and Queen, and State of Virginia, of the one part, and Edwin Upshaw, of the County of King and Queen, and same State, of the other part, witnesseth: that for and in consideration of the sum of three hundred and fifty pounds, current money of Virginia, to the said Beverly and his wife, in hand paid, by the said Edwin Upshaw, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged by the said Beverly and Janet, his wife,

they, the said Beverly and Janet, have granted, bargained, sold, aliened, released, enfeoffed and confirmed, and by these presents do bargain, sell, alien, release, enfeoff and confirm unto the said Edwin Upshaw, to him and to his heirs forever, a certain tract or parcel of land containing seven hundred acres, being part of a certain tract or parcel of land containing one thousand acres, granted unto the said Beverly Roy by the Commonwealth of Virginia, by virtue and in consideration of a part of a military warrant, number one hundred and fifty-four, issued the third day of March, one thousand seven hundred and eighty-three; which tract or parcel of land, containing one thousand acres, as aforesaid, is more particularly described by survey, bearing date the twenty-seventh day of December, one thousand seven hundred and eighty-seven, as lying and being in the district set apart for the officers and soldiers of the Virginia continental line, on the north-west of the Ohio, and on the waters thereof, and bounded as followeth, to wit: beginning at two ashes and a hoop wood, north corner to John Campbell's survey, No. 866; running south 45°, west five hundred poles, crossing a branch at two hundred and eighty-six poles, to a white oak, hickory and poplar; west corner to William Smith's survey, No. 866; thence north forty-five degrees, west three and twenty poles to a sugar tree and two ashes; thence north forty-five degrees, east five hundred poles, crossing a branch at three hundred and twelve poles, to a sugar tree and two dog-woods; thence south forty-five degrees, east three hundred and twenty poles, to the beginning. To have and to hold the aforesaid tract or parcel of land, containing, as aforesaid, seven hundred acres, and part and parcel of the aforesaid one thousand acres, unto the said Edwin Upshaw, to him and his heirs, forever; together with all and singular, buildings, improvements, orchards, waters, water courses, woods and appurtenances, unto the said tract or parcel of land, containing seven hundred acres aforesaid, in any wise appertaining or belonging, to the only proper use and behoof of the said Edwin Upshaw, his heirs and assigns, forever. And the said Beverly Roy and Janet, his wife, do hereby covenant for themselves, their heirs and assigns, to warrant and defend the title in and to the aforesaid seven hundred acres of land, unto the said Edwin Upshaw, his heirs and assigns, forever, free from the claim or demand of the said Beverly Roy and Janet, his wife, their heirs and assigns; and free from the claim or demand of all persons whatever.

In witness whereof, the said Beverly Roy and Janet, his wife, have hereunto subscribed their names and affixed their seals, the day and year first above written.

BEVERLY ROY, [L. S.]
JANET ROY. [L. S.]

Signed and acknowledged in the presence of

(The words, "by the Commonwealth of Virginia," between the 21st and 22d lines of the first page, interlined before signed; also the word "Essex," in the 6th line of the same page, erased; and the words, "King and Queen," interlined between the 6th and 5th line, before signed.)

Ro. Courtney,
Tho. Jeffries,
A. Newhall.

King and Queen County, *to wit:*

We, Thomas Jeffries and Robert Courtney, Justices of the Peace in the county aforesaid, in the State of Virginia, do hereby certify, that Janet Roy, the wife of Beverly Roy, parties to a certain deed for the conveyance of real estate to Edwin Upshaw, bearing date on the 24th day of August, 1817, and hereto annexed, personally appeared before us, in our county aforesaid, and being examined by us privily, and apart from her husband, and having the deed aforesaid fully explained to her, she, the said Janet Roy, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed and delivered the same, and that she wished not to retract it.

Given under our hands and seals, this 5th day of Sep'r, 1817.

THO. JEFFRIES, [L. S.]
RO. COURTNEY. [L. S.]

Virginia:

At a Court held for King and Queen County, at the Court House, on Monday, the 8th of September, 1817.

This deed, made between Beverly Roy and Janet, his wife, of the County of King and Queen, and State of Virginia, of the one part, and Edwin Upshaw, of the County of King and Queen, and same State, of the other part, was proved as to the said Beverly Roy, by the oaths of Robert Courtney, Thomas Jeffries and Amos Newhall, the witnesses thereto subscribed, which is with the certificate annexed, of Thomas Jeffries and Robert Courtney, two of the justices of the peace in and for the said county, of the privy examination of the said Janet Roy, and of her acknowledgement of the said deed—ordered to be certified.

In testimony whereof, I have set my hand and affixed
[L. S.] the seal of the said county, this 8th day of September, 1817.

ROBERT POLLARD, *C. C.*

At a quarterly court held for King and Queen County, at the court house, on Monday, the 9th of March, 1818, "on the motion

of Edwin Upshaw, this deed, and the certificates annexed, are ordered to be recorded."

Teste: ROBERT POLLARD, *C. C.*

Truly recorded.

Teste: ROBERT POLLARD, *C. C.*

Will of Buckner.

"In the name of God, amen. I, Philip Buckner, of Bracken County, and State of Kentucky, being in sound mind, memory and understanding, do make this, my last will and testament, revoking all former wills in the manner and form following: Item—I give unto my son, Samuel Buckner, two hundred acres of land, his choice, and of a survey of eight thousand acres, in the name of Francis Smith. Item—I give unto my grandson, Coleman Buckner, one hundred and fifty acres of land, adjoining the land of Dickerson Morris, and on the east side of the State road, to include the meadow now cleared, to be under the direction of his father, Samuel Buckner, until Coleman Buckner arrives at the age of twenty-one years. Item—I give unto Betsy Blanchard, my daughter, one dollar, she having had her share of my estate. Item—I give unto my daughter, Polly Horee, one dollar, she having had her share. Item—I give unto William Buckner, my son, one dollar, he having had his share. Item—I give unto Fanny Morris one dollar, she having had her share. Item—I give unto my daughter, Sally Pickett, two hundred dollars, in property or bonds, to her and her heirs. Item—I give unto Thomas Buckner, my son, the plantation I now live on, to include one hundred and fifty acres, and to adjoin Dickerson Morris's land and the State road. The reason of this last bequest is, his having assisted in improving the place, and I have neglected his education. Item—All the balance of my property, real and personal, after my just debts are paid, to be equally divided between my wife, Tabbee Buckner, and my four children, to wit, Samuel Buckner, Suckee Taliaferro, John Buckner and Thomas Buckner; my wife's part to be entirely at her disposal. I constitute and appoint my son, William Buckner, my sole executor of this my last will.

In witness whereof, I have hereunto set my hand and seal, this 28th day of February, 1817.

PHILLIP BUCKNER, [L. S.]

Signed and ack'd in the presence of
FRANCIS WELLS,
ROBT. WALTON,
ANDREW SMALLY.

Bracken County, December Court, 1820.

This last will and testament of Phillip Buckner, dec'd, was, on the 4th day of December, 1820, produced in open court, by Wil-

liam Buckner, the executor therein named, was proven by the oath of Francis Wells and Robert Walton, two of the subscribing witnesses thereto, and was ordered to be recorded.

Attest: JOHN PAYNE, *Cl'k.*"

Inventory of Appraisement.

An Inventory of the Goods and Chattles of Philip Buckner, deceased, appraised the 9th December, 1820.

1 boar, 2 sows and pigs	$8 00
4 fat hogs	12 00
1 bay mare	50 00
1 small brown mare	35 00
1 small bay horse	20 00
1 other bay horse	35 00
1 pair of cart wheels	10 00
1 iron tooth harrow	5 00
1 pair of stretchers	2 50
3 hoes	50
1 spade and shovel	1 75
1 set of plough irons	3 00
do. do.	1 50
1 fluke harrow	3 00
3 axes	4 00
1 broadaxe	1 00
3 mattocks	3 25
1 bramble scythe	1 00
3 old scythes, 5 syckles, 1 hemp hackle	2 00
1 scythe and hangings	1 50
1 cross-cut saw	1 00
1 log chain	3 00
2 pair chain and haims	5 00
1 sledge hammer and 1 crowbar	7 00
1 pair steelyards	3 00
Tanners' tools	5 00
1 set of blowing tools	2 00
1 screw auger	75
1 swingletree and clevis	1 50
1 saddle	2 00
Man's saddle	8 00
Churn and 2 buckets, 2 kealers, 1 half bushel and tub	2 00
4 empty barrels	75
2 pots and 1 oven	3 00

1 large copper kettle	$10 00
1 do. iron	4 00
1 frying pan and tea-kettle	2 00
1 gridiron	75
Cupboard and furniture	7 50
1 bed and furniture	12 50
1 do. do.	12 50
1 do. do.	10 00
4 whiskey barrels	4 00
1 gallon bottle	50
1 box of lumber	1 00
1 grindstone	4 00
2 bells and collars	1 00
Crop of corn, at 18 cts. per b.	
do. wheat, 25	25 00
1 flax-brake	1 00
1 desk	7 00
5 chairs	1 25
1 clock, Yankee	10 00
1 trunk, 1 chest	50
1 breakfast table	2 00
1 souse tub	37½
1 bible and 2 prayer books	9 00
1 spice mortar	1 00
15 head of sheep, $1.25 p.	18 75
1 wheat-fan	3 00
3 boxes, 2 barrels, 20 bushels spetts	5 00
1 cow and calf	13 00
1 red cow	10 00
1 brindle cow	15 00
1 white-faced cow	9 00
1 white heifer	9 00
1 red and white do.	3 00
1 pitchfork, iron	50
1 English heifer	5 00
1 calf	1 00
1 black bull	2 50
Fodder	5 00
Surveyor's compass and chain	20 00
1 blacksmith's bellows	12 00
1 Dutch scythe	75

WILLIAM LOGAN,
HENRY HENDERSON,
HUGH ATWELL, } *Appraisers.*
WILLIAM BUCKNER, *Executor.*

"*Bracken County, January Court*, 1821.

This inventory of the appraisement of the estate of Philip Buckner, dec'd, was returned by the commissioner, and ordered to be recorded.

Attest: JOHN PAYNE, *Cl'k.*"

Inventory of Notes.

An Inventory of Notes belonging to the Estate of Philip Buckner, deceased.

Obligor's Names.	Date of Bonds.	When Due.	Amount.
Peter M. Walcott,	1st Feb. 1816,	1st Feb. 1818	$100 00
Ezekiel Maple,	1st Sept. 1804,	1st Sept. 1805	55 00
William Martin,	16th Au. 1814,	16th Aug. 1818	300 00
Patterson & Harry,	8th Nov. 1816,	8th Nov. 1817	15 23¾
James Rice,	20th M'y 1815,	On demand.	26 25
Jacob Mains,	25th Dec 1816,	By instalments.	75 00
Philip R. Rice,	21st Ja. 1818,	25th Dec. 1819	59 17½
William King,	22d Aug. 1815,	22d July, 1817	150 00
Alr. Garrison,	3d Oct. 1818,	1st Jan. 1819	37 00
His second bond,	3d Oct. 1818,	1st Oct. 1820	38 00
Willis Chick,	24th Sep. 1818,	1st March, 1820	37 50
His second bond,	do.	1st April, 1819	37 50
Alex'd. Chick,	24th Sep. 1818,	1st March, 1820	38 00
Benj. York,	18th Sep. 1820,	25th Dec. 1822	42 00
His second bond,	18th Sep. 1820,	25th Dec. 1821	42 00
His third bond,	18th Sep. 1820,	25th Dec. 1821	28 89
Seth Hull,	17th Feb. 1817,	1st Jan. 1820	300 00
Jesse V. Daily,	27th Ja. 1818,	1st March, 1820	100 00
His second bond,	27th Ja. 1818,	1st March, 1819	46 30
James Hale,	24th Nov. 1819,	24th May, 1820	36 90
Thomas Falkner,	21st Dec. 1819,	On demand.	29 87½
His second bond,	11th Oct. 1818,	25th Dec. 1819	87 00
William Summers,	20th Sep. 1819,	1st Jan. 1821	24 82
His second bond,	do.	1st Jan. 1822	24 82
Lewis Young,	8th Feb. 1820,	8th Feb. 1821	32 75
Daniel Morford,	17th Mar. 1819,	17th Mar. 1821	75 00
Hugh Atwell,	11th Feb. 1819,	11th Feb. 1822	1,250 00
John Parker,	29th Sep. 1818,	1st April, 1821	50 00
			$3,139 01¾
John Parker,	29th Sep. 1818,	1st April, 1819	50 00
His third bond,	do.	1st April, 1820	50 00
W. & I. Levi,	28th Feb. 1820,	1st Oct. 1822	241 97
			$3,480 98¾

Amount brought forward,			$3,480 98¾
Simon Kenton,	24th July 1819,	On demand.	150 00
Mahlon Beaty,	6th Sep. 1819,	6th Sept. 1821	62 50
His second bond,	6th Sep. 1819,	6th Sept. 1820	22 50
Elijah Ellis,	27th Sep. 1820,	1st April, 1821	56 00
James McLin,	23d Oct. 1820,	25th Dec. 1822	75 00
His second bond,	same.	25th Dec. 1821	75 00
George Morgan,	23d Oct. 1820,	25th Dec. 1822	75 00
His second bond,	same.	25th Dec. 1821	75 00
George Patterson,	26th July 1819,	25th Dec. 1820	50 00
Thomas Buckner,	24th Oct. 1820,	On demand.	49 91½
Daniel Harry,	14th Dec. 1820,	25th Dec. 1821	12 25
John M. Ganard,	Note for 187½ gallons whiskey		93 75
			$4,277 90

W. BUCKNER, *Executor.*

Inv'ty Sales.

An inventory of the property sold on the 20th December, 1820, of the estate of Philip Buckner, dec'd, by his executor William Buckner.

		Dols. cts.
David Doak,	2 sows, 8 pigs, 1 boar, -	8 25
William Buckner,	4 fat hogs, - - -	12 00
William Orr,	1 mare, bay, - - -	50 00
Jesse Harry,	1 brown mare, - -	28 00
William Buckner,	1 bay horse, small, - -	25 25
Buckner Morris,	1 other bay horse, - -	36 00
William Buckner,	1 cart, - - - -	5 00
Thomas Buckner,	1 Iron tooth harrow, -	4 50
Thomas Buckner,	1 pair stretchers, -	1 50
William Field,	3 weeding hoes, - -	56¼
William Buckner,	1 spade shovel, - -	1 62½
Isaak West,	1 pair plough irons, -	5 00
Enos Woodward,	1 plough, - - -	1 37½
William Cambridge,	1 plough harrow, - -	2 50
Dickerson Morris,	1 axe, - - - - -	1 50
Amos Hanson,	1 axe, - - - - -	1 12½
William Logan,	1 do. broad, - - -	87½
John Power,	1 Mattock, - - -	1 12½
Amos Hanson,	1 grubbing hoe, - -	75
	Carried forward, - -	$ 186 93¾

	Brought forward, - -	$ 186 93¾
Thomas Buckner,	1 small sang hoe, - -	12½
James Dougherty,	1 axe, - - - -	1 00
James McClanahan,	1 bramble scythe, - -	75
Enos Woodward,	3 old scythes, 5 sickles, 1 hemp hackel, - - -	62½
Thomas Jordan,	1 scythe and hangings, -	1 12½
Enos Woodward,	1 cross-cut saw, - -	1 00
Philip Mains,	1 log chain, - - -	5 00
Henry Spees,	1 pair chains and haimes,	3 00
George Spees,	1 do. do. do.	2 56
Dickerson Morris,	1 stone hammer, - -	3 50
Dickerson Morris,	1 crow bar, - - -	3 25
Charles Field,	1 pair steelyards, - -	3 00
Thomas Buckner,	1 drawing knife, - -	1 25
Enos Woodward,	1 set of tanner's tools, -	75
Samuel Blades,	1 set of blowing tools, -	91
		$ 214 28¼
William Ore,	1 screw auger, - -	62
James Morford,	1 man's saddle, - -	7 62½
William Summers,	1 do. do.	2 26
William Buckner,	2 buckets, 1 tube, - -	1 06¼
Henry Spees,	1 swingle-tree and clevis,	1 12½
Amos Hanson,	2 kealers, - - -	68¾
William Buckner,	2 pots, - - - -	4 06¼
William Buckner,	1 dutch oven, - - -	1 50
Martin Marshall,	1 large copper kettle, -	23 50
James Dougherty,	1 half bushel, - - -	25
Enos Woodward,	1 large iron kettle, - -	3 50
William Buckner,	1 tea kettle, 1 pan, - -	2 31¼
John Fee,	1 gridiron, - - -	1 25
William Buckner,	1 cupboard and furniture,	5 00
William Buckner,	1 bed and furniture, -	10 00
William Buckner,	do. do.	10 00
William Buckner,	do. do.	8 00
William Summers,	2 whiskey barrels, - -	75
Samuel Hamilton,	1 large bottle, - - -	62½
Enos Woodward,	1 box of lumber, - -	37½
Thomas Buckner,	1 grindstone, - - -	4 75
Frederick Spees,	1 bell and collar, - -	75
Amos Hanson,	1 bell and collar, - -	75
Jeremiah Lawson,	1 undivided half corn 23 cts.	
Thomas Buckner,	wheat in the straw, -	20 25
	Carried forward, - -	$ 325 18¾

	Brought forward, - -	$ 325 18¾
Thomas Buckner,	1 wheat fan, - - -	3 50
Thomas Buckner,	3 boxes, - - - -	50
Thomas Buckner, Levi Mains,	1 box, 1 barrel, - -	62½
		$ 115 53½
William Buckner,	1 desk, - - - -	2 50
William Buckner,	5 chairs, - - - -	1 75
William Buckner,	1 clock, - - - -	2 50
William Buckner,	1 trunk and chest, - -	50
do. do.	1 breakfast table, - -	75
do. do.	1 bible and prayer book, -	5 50
do. do.	1 spice mortar, - -	50
William Ore,	5 sheep, first lot, 1st choice,	10 00
John Power,	5 do. 2d lot, 2d do.	8 31¼
John Dougherty,	5 do. 2d lot, 2d do.	6 75
William Buckner,	1 brindle cow, - -	12 00
William Ore,	1 piece heifer, - -	7 00
Peter Vanerable,	1 black and white hiefer and calf, - - -	12 00
William Turner,	1 red and white heifer, -	3 87½
William Brown,	1 brindle cow, - -	10 12½
John Wetherington,	1 red cow and calf, - -	16 00
William Buckner,	1 red and white faced heifer,	7 00
Mahlon Beaty,	1 bull calf, black, - -	3 01
Dickerson Morris,	1 surveyor's compass and chain,	28 00
William Buckner,	1 bellows, - - -	2 00
William Logan,	1 scythe and hangings, -	75
Thomas Buckner,	1 flax brake, - - -	1 00
		$ 122 36¼
		214 28¼
		115 63½
		$ 452 28

"The above is a true and correct bill of sales.
Error in adding last column, $20.

JEREMIAH LAWSON.

20th December, 1820."

BRACKEN COUNTY, *January Court*, 1821.

This inventory of sales of the estate of Philip Buckner, deceased, was this court returned by William Buckner, executor of said Philip Buckner, deceased, and the same being approved of by the Bracken

County Court aforesaid, was ordered to be recorded, which is duly done.

Attest, JOHN PAYNE, *Cl'k.*

Additional Inv'ty of appr.

An additional inventory of the goods and chattles of Philip Buckner, deceased, praised the 3d of February, 1821.

One lot of leather,	$ 6 00
Tempy, a black woman,	250 00
William,	350 00
Molley,	300 00
Cyrus,	300 00
Marian,	175 00
Vilet,	150 00
	$1,531 00

WILLIAM LOGAN,
HUGH ATWELL,
HENRY HENDERSON,
Apprs.
WILLIAM BUCKNER,
Executor.

Additional Inventory of Sales.

An Inventory of sales of the goods and chattles of the estate of Philip Buckner, deceased, sold the 3d of February, 1821.

William O. Blackerby, one lot of feathers,	$1 75
do. do.	1 50
do. do.	1 75
do. do.	63
do. do.	1 37½
	$7 00½
Thomas Buckner—Tempy, Vilet, and Amanda,	550 00
same, William,	350 00
William Buckner—Cyrus,	310 00
Thomas Buckner—Molley,	300 00
	$1,517 00½

WILLIAM LOGAN, *Clerk.*

"BRACKEN COUNTY, *March Term*, 1831.

The foregoing inventory of the appraisment and sales of the estate of Philip Buckner, deceased, was returned into court by the executor, and ordered to be recorded.

Attest: JOHN PAYNE, *Clerk.*"

BRACKEN COUNTY, *sct.*

I, John Payne, clerk of the court for the county aforesaid, do hereby certify, that the foregoing copies of the will and inventories of the appraisement and sales of the estate of Philip Buckner, deceased, and inventory of notes returned by said executor, are truly copied from the originals on file and of record in my office.

In testimony whereof, I have hereunto set my hand and [L. S.] affixed my seal of office, this 29th day of June, 1833.

JOHN PAYNE.

Cost of copies, $2 50.

Attest: JOHN PAYNE.

STATE OF KENTUCKY, *Bracken County, to wit:*

I, John Burkett, presiding justice of the peace, of the county court, in and for said county, do certify, that the foregoing attestation of John Payne, Esq., who is clerk of said court, is in due form, and as such entitled to full faith and credit.

Given under my hand and seal, this first day of July, in the year 1833.

JOHN BURKETT, [L. S.]

Settlement.—P. Bu kner.

We, the commissioners, appointed by the County Court of Bracken, to sell the estate of Philip Buckner, deceased, with the ex'r, have met this 8th day of October, 1822, and proceeded as follows, to wit:

Amt. of sale on the 20th Dec., 1820,	$452 28
2nd sale on 2d February, 1821,	1,517 00½
To am. of notes as per inventory,	4,277 90
To cash rec'd of Asa Day,	5 00
" " of Sam'l Hamilton,	14 25
" " of Wm. Hamilton, for barrels,	4 50
" " of Henry Henderson,	2 62
" " of Charles Field,	5 87½
" " of George Mains,	5 31¼
" " of Mahlon Beaty,	1 15
" " of Charles Harry,	15 00
" " of Wm. Logan, for 4 hides,	9 77
Amt. due from John Hanson, on settlement,	77 80
of Wm. King's, sen. judgment,	275 40½
	$6,663 86¾
Amount of disbursement and allowances,	5,367 33
Amt. of bal. now in the hands of executor,	$1,296 53¾

FRANCIS WELLS,
WILLIAM FIELD.

Estate of Philip Buckner, deceased, with the Executor, William Buckner.

Dr.

To bonds, given by Jesse V. Dayley to Philip Buckner, and receipt produced by said Dailey,	$146 30
To cash paid Philip R. Rice, as per act. rendered,	18 72
To cash paid James Dougherty,	16 56
To amt. paid Mahlon Beaty,	11 19
" of McLin's note taken up,	150 00
" of Morgan's bonds, do.	150 00
To cash paid Sheriff, for Runyon and Morris,	306 93
" Thomas Buckner, per act.	4 50
" Martin Marshal, as per rec't.	193 50
" do. do.	50 00
" Due Marshal, balance of judgment,	74 67
" Armstrong and Hamilton's judg. in full,	50 00

Account Continued.

Dr.

To amt. discounted, on Falkner's bond for land,	$50 33
" Simon Kenton's bond returned as not collected,	150 00
" Cash paid Mahlon Beaty, as per rec't.	40 00
" " James A. Paxton, do.	100 00
" " John Chamber's do.	150 00
" " Wm. Field, do.	27 10
" " Amos Hanson for coffin,	10 00
" " for postage,	61¼
" " Sam'l Williams per rec't.	12 12½
" " Peter Vendable,	18 44½
" Peter M. Wallott's bond, returned, not collected,	100 00
" Ezekiel Maple's bond returned,	55 00
" William Martin's bond returned,	300 00
" John Parker's 3 notes, returned, not collected,	150 00
" A. Chick's judgment, nothing can be made,	38 00
" A. Garrison's notes and judgment, to wit,	75 00
" Seth Hull's note, returned not collected,	300 00
" P. R. Ricis' note returned, nothing to be made,	59 17½
" Benj. York's notes returned,	42 00
" Charles Field's proven ac't.	2 49
" Cash pd. Dickerson Morrison for surveying, per rec't,	57 50
To cash paid David Davi, as per act. rendered,	21 85
" " Wells & Clenny, on repl. bond,	38 15½
" " Abraham Baker, repl. bond,	26 00
" " On an exec'on, A. D. Keeth vs. P. Buckner,	57 50
" " Levin Field's ac't.	22 55
" Charles Harry's note given up to John Payne,	15 00
" Cash paid John Payne, per bills as per. rect.	54 70
" " Edward Campbell as per act.	14 25
" " John Chambers as per act.	20 00
" " Wm. Logan 3 fee bills, Marshall Key,	4 39
" " do. as per act. rendered,	12 00
" " Augustus Gross,	22 12½
" " James A. Paxton, as per rec't.	65 00
" " Anderson Donoplean ac't.	13 62½
" " Wm. Field, tax,	11 62½
To cash p'd Wm. Fields, fee bill,	62½
" " " " " judg't in favor of Gibson,	66 70
" " " M. Marshall, as per rec't,	32 74
" Note on Benj. York, all'd on Bradford's certificate,	12 00
" John Harry and James Patterson's note,	15 33
" A. Routt's cer't for bonds and costs, vs. Jas. Hall,	36 90
" Cash p'd John Payne, pr. bills,	36 50½
" Cost " Wm. Fields, per bill,	62½
" Allow for or on Wm. King, Jr's note,	126 22
	$2,363 19½

Account—Continued.

	Dr.
Amount brought forward, - -	$2,363 19¼
" " on Peril's cert'fs, Benj. York, - -	28 89
" Wm. Putnam's ac., - - -	1 64¼
" W. Chick's 2 notes, all'd on de'ft $37 50, -	75 00
" Cash p'd Rob't Walton, as per bill, - -	2 75
" " " Wm. Logan, on ac. 22d Ap'l, 1821, -	10 52
" " " E. Woodward, on Ex'on Putnam's office,	7 96
" Hugh Attwell's note, collectable, - -	1,250 00
" Cash p'd John Chambers, 15th Nov. 1822, as per rec't, - - - - - -	22 00
	$5,065 33
Am't paid William Fields for services as commissioner, - - - - - -	2 00
Am't all'd ex'r for services rendered, - -	300 00
	$5,367 33

Bracken County, Nov. Court, 1823.

This account of the settlement of the estate of Philip Buckner, deceased, was this day returned into court, and ordered to be recorded. Att: JOHN PAYNE, *Clk.*

William Buckner, Ex'or of Philip Buckner, dec'd,
In Account, Dr.

To the am't of balance in your hands, as per last report of the com'r, recorded and returned at Nov. Court, 1823, - - - - -	$1,296 53¾
To am't rec'd on ex'on 'gst. Hugh Atwell, -	215 00
	$1,511 53¾
Contra Cr.	
By cash p'd Mason Brown, for John Brown, Nov. 1st, 1823, as per rec't in part of note, on which there is now judg't in the Br. Ct. Ct., - -	$100 00
By am't credited on the ex'on Wm. Buckner, ag'st the Hs. of Philip Buckner, dec'd, - -	1,296 53¾
By am't p'd John Payne, clk. of the Br. Ct. Ct. as per his rec't for fees due him, - - -	89 48½
By cash p'd John Bassett, constable of Br. C'ty by hands of Thos. Buckner, for judg't ag'st P. Buckner, &c., - - - - -	81 58
	$1,565 60¼
Amount due executor, - - - -	55 06½
Dr. to am't rec'd on ex'on vs. R. Rar and others, -	127 00

Amount in hands of executor, - - -	71 93½
By cash p'd Hugh B. Payne, for his com'n to sell Atwell's land, as per receipt, - - -	61 18½
Am't p'd Robert Walton, late sheriff of Br. County, for serving subpœnas in Chancery, Buckner's ex'ors vs. Hugh Atwell, Rice, &c., Hull, &c., Willis Chick, &c., Alex. Check and B. York, &c., - -	11 00
Am't in the hands of executor, - - -	50 18½

We find the above sum of fifty dollars and eighteen and a half cents, in the hands of William Buckner, ex'or.

Given under our hands, this 28th day of June, 1824.

ROBERT WALTON,
WM. FIELD, *Com'rs.*

Bracken County, June Court, 1824.

This account of the settlement with the executor of Philip Buckner, deceased, was this day returned into court, and ordered to be recorded. Att:

JOHN PAYNE, *Clk.*

William Buckner, ex'or of P. Buckner, deceased, *Dr.*

1826, May 8th.	
To am't in the hands of ex'or, as per settlement 28th June, 1834, - - - - -	$50 18½
" am't rec'd for the sales of land under a decree of the Br. Ct. Ct. ag'st Seth Hull, - -	10 00
am't rec'd for the sale of land under decree of same court ag'st Benj. York, - -	20 00
" am't rec'd for the sales of land under decree of same court ag'st Willis's check - -	10 00
	$90 18½
Credit by disbursements, viz:	
1826. To cash p'd Vachall Weldon, constable, on judg't in favor of Wm. W. Worsby, per receipt, -	18 92
" cash p'd John Chambers, per rec't, - -	20 00
" " " Robert Walton, sh'ff, pr. fee bill, -	5 85
" " " James Murry, pr. fee bill, - -	1 62½
" " " adm'rs of J. P. Findly, pr. rec't, -	
" " " Abner Holton, per fee bill, 2 bills, -	4 12½
" " " John Burkett, fee bill, - -	2 50
	$53 02
By " " John Pearle, - - - -	75
" am't of M. Marshall's fee bill, per services, dated 31st May, 1826, - - - -	1 40
" am't of Sarah Finley's bill, as admrx. of J. P. Finley, dec'd, - - - -	7 00

		$200 77
Am't of assetts in hand, - - - -		90 18
Which shows a balance in favor of	($110 59)	
the ex'or of the estate of P. Buckner, dec'd, of		110 59
June 7th, 1826.		
FRANCIS WELLS,		
JOHN NEWMAN.		
By am't of John Payne's fee bill, to January 18th, 1826, - - - - -		41 19½
June 26th, 1826.		$151 78½
FRANCIS WELLS,		
J. NEWMAN.		

Bracken County, June Court, 1826.

This account of the settlement with the executor of Philip Buckner, dec'd, was this day returned into court, and, being examined, is ordered to be recorded, which is duly done.

Att: JOHN PAYNE, *Clk.*

The undersigned, com'rs appointed by the Bracken County Court, to settle with William Buckner, ex'or of Philip Buckner, dec'd, his accounts, have, at the request of s'd ex'or, brought the whole into review, and settled the same, as follows, viz:

We find the ex'or chargeable with the am't of sales on the 20th Dec'r, 1820, - - - -	$	452 28
The am't of sales on the 3'd of Feb'y, 1821, -		1,517 00½
Cash rec'd of Asa Day, - - - -		5 00
Cash rec'd of Sam'l Hamilton, - - -		14 25
Cash of Will Hamilton, for barrels, - -		4 50
To cash of Henry Henderson, - - -		2 62½
" " of Charles Field, - - - -		5 87½
" " of George Mains, - - - -		5 31¼
" " of Mahlon Beatty, - - -		1 15
" " of Charles Harry, - - - -		15 00
" " of Wm. Logan, for 4 hides, - -		9 77
" " of John Hanson, a balance due on settlement,		77 80
" am't of judg't against Wm. King, sen., rec'd, -		275 40½
		$2,385 96¾
Am't of notes due the estate, as per inventory returned,		4,277 90
		$6,663 86¾

We find that the ex'or has disbursed the following sums, for which he is entitled to a credit, viz :

		Two bonds on Jesse V. Dayley, for $146 30, - -	$ 146 30		
		Contained in the inventory returned; they were paid off to P. Buckner, in his life time, as per receipt No. 1, -			$6,517 56¼
No. 2	Feb'y 25, 1821,	By ac't paid Philip R. Rice, - - - -	18 71¾		
" 3	same,	" " " James Dougherty, - - - -	16 56¼		
" 4	1821, June 22d,	" " " M. Beatty, - - - - -	11 19		
" 5	1821, Aug. 2d,	" cash " Sh'ff Br. C'y, ex'on Runyon & Morris, vs. P. Buckner &c., - - - -	306 93		
" 6	1821, 3d Mar.,	" ac't " Thomas Buckner, - - - -	4 50		
" 7	Ap'l 23,	" cash " M. Marshal on judg't in his fav'r ag'st P. Buckner, - - - - -	193 50		
" 8	Oct. 8,	" " " Same on judg't ag'st Philip Buckner, per rec't,	50 00		
" 9	no date,	" " " M. Marshal, for balance on s'd judg't, $97 41½, and for fee as a lawyer, $20, receipt No. 9,	107 41½		
		This includes a credit in 1st settlement, to cash disbursements, balance of judg't $74 67.			
" 10	1821, Sept. 24,	Am't of credit given by ex'or on the bond of Folkner, for a deficiency in land, and int. thereon, - - -	50 33		
" 11		Amount of Philip Buckner's rec't to Mahlon Beatty, for part of Beatty's bond, charged ex'or, as per rec't No. 11,	40 00		
" 12	1821, Nov. 1,	By cash paid Wm. Figgins, on judg't ex'on, per rec't No. 12; this is created in first settlement as paid Wm. Field, by mistake, - - - - - -	27 00		
" 13	22d Dec.	" cash paid Hanson, for Coffin, - - - -	10 00		
					$5,681 33¼

No. 14	1822, 23 Sept.	Amount p'd Abner Holton, on ac't with Sam'l Williams, as per rec't,	12	12½	
same	same,	" cash p'd P. Vendable, vs. ex'or,	18	44½	
No. 15	3d Oct. 1821,	" " " Charles Field, on ac't,	2	49	
" 16	1821, Ap'l 15,	" " " D. Morris, on ac't, for surveying,	57	50	
" 17	1822, M'r 12,	" " " D. Davis, per ac't and rec't,	21	85½	
" 18	" " 27,	" " " Willis and Chung, on repl'y Bond,	38	15½	
" 19	" May 8,	" " " Abr'm Baker, as per rec't on execution,	26	00	
" 20		" the am't of Chas. Harry's note, p'd off before death of P. Buckner, and given up through hands of Payne,	15	00	
" 21		" the am't of Buckner's order in fav'r of Wm. Field, and excepted by ex'or, 22d Nov., 1820, on ac't L. Field,	22	55	
" 22	1822,	" cash p'd John Payne, for fees ag'st estate, per bill,	54	70	
" 23	" M. 12,	" " " E. Campbell, on ac't, per ac't,	14	22	
" 24	1821, M'r 31,	" " " M. Rey, for fees ag'st estate, 3 bills,	4	39	$5,373 89½
			Cr.		
" 25		" " " Wm. Logan, on ac't, as per ac't rendered,	$12	00	
" 26	1821, Oct. 12,	" " " A. C. E. Gross, on ac't,	22	12	
" 27	" June 20,	" " " A. Donophanon, on ac't,	13	62½	
" 28	1822, M'r 25,	" " " Wm. Field, sh'ff Br. C'ty, for tax, &c.,	11	62½	
" 29	1821,	" " " " " for fees as sh'ff Br. C'ty,		62½	
" 30	1822, Nov. 25,	" " " on ex'on Gibson vs. ex'or to Wm. Field, L. B. C.,	66	10	
" 31	1822, Aug. 5,	" " " John Payne, for fees ag'st estate, per receipt,	36	50½	
" 32		" " " on Wm. King's note, in life time of P. Buckner, dec'd, and the whole note, principal $150, charged ex'or,	126	23	
" 33		" " " William Putman, on ac't,	1	64¾	
" 34		" " " R. Walton, for fees ag'st estate,	2	75	

322. 87

Statement—Continued.

No. 35	1822, Ap'l 22,	Am't cash p'd Wm. Logan, on ex'on, vs. P. Buckner, $9 82, on ac't, 70 cents, as per note of ex'or,	$10 52		*Cr.*
" 36	1823, Ap'l 29,	" " " Enos Woodward, on ex'on ag'st P. Buckner,	7 96	$5,373	89½
" 37	1821, Nov. 5,	" " " James Paxton, on judg't Bracken County Court,	100 00		
" 38	August 14th,	" " " John Chambers, on judgments, - -	150 00		
				561	69¾
				$4,812	19½
" 39	1822, July 23,	" " " " " " " " - -	20 00		
" 40	" " 25	" " " James A. Paxon on judg't, per rec't, -	50 00		
" 41	Ap'l 23,	" " " same on judg't, - - - -	15 00		
" 42	Nov. 15,	" " " John Chambers, on judg't, - - -	22 00		
" 43	1822, Oct. 8th,	" " " Wm. Field, as a com'r, first settlement, -	2 00		
				109	00
				$4,713	19½
		We find that the following bonds and notes were returned to the com'r at the 1st settlement, as insolvent, viz: or cancelled, viz:			
" 44		By note on James McLin, cancelled, being made by the ex'or without proper authority, - - - -	150 00		
" 45		" Note on George Morgan, same kind, - - -	150 00		
" 46		" Bond of Simon Kenton, returned, insolvent, - -	150 00		
" 47		" Bond on Peter M. Walcott, returned, insolvent, -	100 00		
" 48		" Ezekiel Maple's bond, returned, insolvent, - -	55 00		

" 49		" William Martin's bond, returned insolvent, - -	$300 00	905 00
		Cr. By notes returned, viz: - - - -		$3,808 19½
" 50		By 3 notes on John Parker, retu'd insolvent, - -	150 00	
" 51		" Judg't ag'st Alex'r Chick, retu'd, - - -	38 00	
" 52		" Judg't ag'st Alex. Garrison, insolvent, - - -	75 00	
" 53		" Note on Seth Hull, ret'd, - - - -	300 00	
" 54		" Philip R. Rice's note, - - - - -	59 17½	
" 55		" Benj. York's note, - - - - -	42 00	
" 56		" Benj. York, judg't before Bradford, insolvent, - -	42 00	
" 57		" Note on John Harvy and James Patterson, insolvent,	15 23	
" 58		" Judg't vs. James Hall, before N. Routt, insolvent, -	36 90	
" 59		" Judg't Benj. York before Jno. Pearle, insolvent, -	28 89	
" 60		" Two notes on Willis Chick, returned insolvent, -	75 00	
" 61		" Hugh Atwell, note retu'd insolvent, - - -	1,250 00	2,112 19½
				$1,696 00
" 62	3d Sept. 1821	We find that the former com'rs reported the following disbursements, viz:		
		By cash p'd Armstrong & Hamilton's judg't in full, $50: to prove this item, the ex'or at this time can only produce a receipt for $30; this we report, the $20 we cannot, - -		$ 30 00
" 63		We find the former com'rs reported cash, - - -	$ 20 00	1,666 00
		P'd for postage 61½ cents: for this we have not any voucher, and cannot report it. - - - - -	61½	
" 64	July 29	Also, "cash p'd on an ex'on A. D. Keith *vs.* P. Buckner, $57 50: for this we have a voucher for $37 50 only, paid R. Elliott,		

No. 65		constable; this we report, the balance of $20 we cannot report, - - - - - - - -	20 00	37 50
		Also, "cash p'd Wm. Field fee bill 62½:" this we find no rec't for, and cannot report, - - - -	62½	
" 66			$41 23¾	
		We find the com'rs who made the 1st settlement, on the 8th of Oct. 1822, allowed the ex'or for his services, - -		300 00
				$1,328 50

Thus we find, from the documents presented to us, that there is in the hands of the ex'or, as per the 1st settlement, as *connected* by us, the sum of $1,328 50. The $41 23¾, for which no voucher was produced, was not allowed by us, and must stand upon the 1st settlement. We then proceeded to review the second settlement made with the said ex'or, by Robert Walton and William Field, com'rs, on the 28th of June, 1824, viz:

We find by the last report, that there was in the hands of the ex'or, the sum of - - - - - - - - - -		$1,328 50
We find that the ex'or received, on account of the debt due the estate by Hugh Atwell, upon a sale of land, by a decree of the Br. Ct. Ct. - -		215 00
We find that the ex'or rec'd, on account of an execution ag'st Robt. Barr, &c. - - - - - - - - -		127 00
		$1,670 50

	We find the ex'or has disbursed as follows:			
" 67	1823, Nov. 1	To John Brown in part of judgment and ex'on, as per rec't of Mason Brown, his att'y at law, - - - -	$ 100 00	
" 68	1824, Apr. 15	We find that Will. Buckner, the ex'or, had an ex'on ag'st the heirs of P. Buckner, upon which he entered a credit for the sum of - - - - - - - -	1,296 50¼	
" 69	" June 27	Cash p'd John Payne for fees ag'st the estate, as per his rec't,	89 48½	
" 70	" " 28	Cash p'd John Bassett, a constable of Bracken county, through hands of Thos. Buckner, for judg't in fav. of Stillwell Moore ag'st P. Buckner, as per Basset's receipt, - - -	81 58	1,567 60¼
				$102 89¾
" 71		By cash p'd H. B. Payne as per order of Br. Ct. Ct., per rec't,	10 75	
" 72	1824, June 28	" " " R. Walton sh'ff, for fees ag'st estate, as per his statement in report, - - - - -	11 00	21 75
				$81 14¾
		Upon which we find the sum of $81 14¾ in the hands of the ex'ors. We then re-examined the third settlement made by Francis Wells and John Newman, June 26th, 1826. We find in the hands of the ex'or, as per statement before given, the sum of - - - - -	81 14¾	
		We find the ex'or has rec'd on account of a debt due by Seth Hall upon a sale of land by a decree of the Br. Ct. Ct. -		10 00
		Cash rec'd by him on account of debt due by Benj. York, on sale of land by decree same court, - - -		20 00

Statement—Continued.

		Cash rec'd by him on debt, due by W. Cheek, on sale of land by decree same Ct. - - - - -		$ 111 14¾ 10 00
				$121 14¾
		We find that the ex'or has disbursed the following sums:		
No. 73	May 8th, 1825	By cash p'd Vachael Weldon, const. on ex'on in favor W. W. Worsley, as per receipt, - - - - -	$18 92	
" 74	July 29th, 1825	" cash p'd John Chambers on judg't ag'st ex'or, per receipt,	20 00	
" 75	1822	" cash p'd Rob't Walton, sh'ff, Br. Ct. for fees per bill, -	5 85	
" 76	1824, Jan'y	" cash p'd James H. Murray, for fees ag'st ex'r per bill, -	1 62½	
" 77	1824, June	" cash p'd Abner Hotton, for fees ag'st estate per 2 bills,	4 12½	
" 78	1824, Feb'y	" " p'd John Burkett, a justice of the peace, for fees ag'st the estate, per bill, - - - -	2 50	53 02
				$68 12½
" 79	1821	" cash p'd John Pearle, a justice of the peace, for fees due by ex'or per bill, - - - - - -	75	
" 80	1826, May 31	" cash p'd M. Marshall for fees as an att'y and counsellor at law for the estate, per his ac't and rec't, - -	140 00	
" 81	1825, Aug. 2d	" cash p'd admr'x of John F. Findley, on ac't as per rec't for printing advertisements for sale of property, in suit in Ch'y, in fav'r of estate, - - - - -	7 00	
" 82	1826, June 1	" cash p'd John Payne for fees ag'st the estate, as cl'k, per rec't, - - - - - - -	41 19½	188 94
				$110 81½

		Thus we find upon viewing the settlement, as made with former com'rs, that there was a balance due the ex'or, as p'r the document referred to, of $110 81¼ cents. We then proceeded to settle with the executor for money received, and disbursements made since the last settlement, as follows, to wit:		
		We find from the settlement made out by us upon a review of the former settlements, that there is, aaccording to our statement, a balance due the executor, - - -		110 81¼
No. 83	1827, Oct. 11th	We find by the report of the ex'or, [that he has collected a debt due the estate by Wm. Miranda, - - -		106 02
" 84	1825, Dec. 3d	We find also, that he had rec'd a debt of Philip R. Rice, of		135 01½
				$241 03½
				130 21¾
		And after deducting $110 81¼, the balance due the ex'or, there will be a balance in his hands of - - -		130 21¾
" 85	Oct. 9th, 1827	We find that the ex'or has further disbursed cash to John Payne cl'k, for fees in course of the adm'n as per bill, -	51 85	
" 86	1825, July	" cash to Hugh B. Payne, com'r in 3 suits in ch'y, per orders Ct., - - - - - - - -	15 00	
" 87	Oct. 12, 1827	" cash p'd John Payne for fees and as comr. per bill and rec't, 13th ac't, - - - - - -	6 25	
" 88	1827, Oct. 13th	" cash p'd M. Marshal, per rec't, for fees as att'y for the estate, - - - - - - -	25 00	98 10
				$32 11¼

	We find that, in adding up the act. of sales, *that* there was an error of $20, which should be charged the ex'r, - - - -	$20 00
	We find in the appraisement of a crop of corn at 18 cts. per bushel appraised, and fodder $5. This is not charged the ex'r, in consequence of his stating that it was for the support of the family.	
	We find that the ex'r should be charged by his report with 151 flour barrels to Thomas Buckner. T. Buckner's act., voucher, No. 6,	56 62½
	We find from an examination of the inventory of notes returned with the appraisment, that some of them bear an interest which the ex'r now accounts for, as follows, viz:	
No. 89.	Two notes of Thomas Falkner; by the voucher filed in the No. 10, it appears that the ex'r has rec'd more than he has accounted for in interest, &c. $19—the balance is now charged him as per statement, No. 89, - - - -	19 00
90.	Also, the debt due by James Rice, we find that on the day the inventory of notes was reported, *that* there was an interest due of $8 78—the ex'r cannot inform us when the note was discharged. We therefore only charge him to that date per statement, No. 90, - - - -	8 78
91.	We find from an examination, that the error has collected from Wm. King, Jr., in addition to what has been charged to him, the sum as per voucher, No. 91, - - - -	$136 52½ 33 06
	We find there were several other notes on hand, as per report in the inventory, but that we have not any means of ascertaining when they were paid; and from all the information rec'd from the ex'r, but little if any was rec'd, except one on Thomas Buckner, on which the ex'r reports that he rec'd interest to the amount of, -	5 25
	We find that, in the attempt to collect the debt of William Miranda, reported as collected, No. 83, that the ex'r brought a suit in ch'y, and failed in s'd suit. Thus he incurred a cost for which judgment was rendered against him, for $17 22½, which he credited the judg't ag'st Miranda for, when recovered; and ex'r having accounted for the whole of that debt, he should be credited by this cost, - - - -	$174 83¼ 17 22½
		$157 61

Thus we find, that there is, at this time, as per the foregoing statement, a balance in the hands of the ex'r of - - - - -	$157 61
But should the Court think that the ex'r is justly entitled to the credit of $41 23¾, as reported on page 7 of this report, he must be credited with the same, viz.	41 23¾
Which will leave the ex'r still indebted the sum of, - - - - - - - -	$116 37½
We find that the ex'r employed B. S. Morris to go to Indiana, for the purpose of trying to collect a debt of Harris' admr., and gave him, as per receipt, $10. This we consider extraordinary exertion on the part of the ex'r, and have allowed him credit therefor, see acc't No. 92. - - - - - - - - -	10 00
Which will leave a balance in his hands of	$106 37½
But should the Court not be satisfied that Capt. Buckner, the ex'r, should have the credit for the $41 23¾ cents, as mentioned above, and on page 7, he will, in that case, have a balance in his hands of - - - - - -	147 61

We are personally acquainted with the trouble, in a great measure, which the ex'r has had in settling this estate, and give it as our opinion, that he should be allowed the further sum of $106 37; that being the balance in his hand of the $41 23¾ mentioned above, should be allowed him. If this is not allowed him, he will yet be indebted the sum of $41 23¾. Should this sum, viz: $106 37, be allowed the ex'r, he will then have rec'd 5 per ct. upon the rec'ts and disbursements or about 10 per ct. upon the rec'ts. Since writing the above, we have had presented to us a rec't for an ac't due George Donophan of $4 37½, and p'd to him. This we have allowed the ex'r a credit for.

GEO. DONOPHAN,
JOHN PAYNE.

Bracken County, October Court, 1827.

The com'rs appointed for the purpose of settling with the ex'r of Philip Buckner, dec'd, his ac'ts, this day made their report, which being examined by the Court is approved, and allowed, and ordered to be recorded; and it is the opinion of the Court, that the ex'r is entitled to the credit for $41 23¾ cents, mentioned in s'd report, page 7; and that he also be allowed the further commission reported by s'd com'rs.

Att: JOHN PAYNE, *Cl'k.*

STATE OF KENTUCKY, *Bracken County, sct:*

I, John Payne, clerk of the court, for the county aforesaid, do hereby certify that the foregoing are true copies from the records in my office.

In testimony whereof, I have hereunto set my hand
[L. S.] and affixed my seal of office, this 13th day of December, 1833. JOHN PAYNE.

Fees for this copy, $4 80.

I, John Payne, do hereby agree, that the foregoing copies shall have the same force and effect as evidence, upon the trial of a suit in chancery in the Circuit Court of the United States, Ohio District, wherein John Buchannon and others are compl'ts, and Edwin Upshaw, def't, as it would have was it certified by the presiding magistrate, or presiding justice of the peace for Bracken county, and his regular attestation, that John Payne is the clerk of said county.

EDWIN UPSHAW,
By his attorney in fact,
JOHN PAYNE.

Dec'r, 12, 1833.

"Endorsement:"

To be used as evidence for defendants in a suit in ch'y in the U. S. Court, Ohio Dist., wherein Upshaw is compl't, and John Buchannon and others are defendants.

UPSHAW, deft.
and
BUCHANNON and others, compl'ts.

Roy's Bond to Upshaw.

Know all men by these presents, that I, Beverly Roy, of the county of King and Queen, am held and firmly bound with Edwin Upshaw, of the county of Essex, in the just and full sum of three hundred and fifty pounds, current money of Virginia, to be paid to the said Edwin Upshaw, his heirs, ex'rs, administrators or assigns, to which payment well and truly to be made, I bind myself, my heirs, executors and administrators, firmly by these presents, sealed with my seal, and dated the twentieth day of July, anno Domini one thousand seven hundred and ninety-seven. The condition of the above obligation is such, that whereas, the above bound Beverly Roy hath, by indenture, bearing date with these presents, bargained and sold unto the said Edwin Upshaw, seven hundred acres of military land, lying in the territory north-west of the Ohio river, being part of one thousand acres granted to the said Roy, by patent

bearing date the eleventh day of December, one thousand seven hundred and eighty-nine: Now, if the said Beverly Roy, and his heirs, shall at any time hereafter, upon the request of the said Upshaw, make and execute any other or further deed of conveyance, which may be necessary for the more effectual conveying the said land unto the said Upshaw, in fee simple, and shall at any time hereafter, when required, procure the relinquishment of all claim of dower, which the wife of him, the said Roy, hath or may have in the said tract of land, and shall save harmless and indemnified the said Upshaw, his heirs and assigns, from all such claim of dower, then the above obligation to be void, or else to remain in full force and virtue.

BEVERLY ROY, [L. S.]

Sealed and delivered in presence of
GEO. BOUDEN,
PHIL. TALIAFERRO.

General Land Office, 4 *December*, 1835.

I hereby certify, that the foregoing is a true copy of the original on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed [L. S.] at the city of Washington, the day and year above written.

ETHAN A. BROWN, *Commissioner*.

Transcript—Upshaw *vs.* Chamberlayne.

COMMONWEALTH OF VIRGINIA:

Pleas in chancery before the justices, County Court of Essex, at the court house, in Tappahannock, and at the Nov. term, in the year of our Lord, one thousand eight hundred and two.

UPSHAW,
vs.
CHAMBERLAYNE, &C.

In an Injunction.

The bill follows here, to wit: "To the worshipful justices of Essex County Court in chancery sitting, humbly complaining, sheweth unto your worships, your orator, Edwin Upshaw, that about nine or ten years past he purchased of Lyne Shackelford, (who departed this life a few days past, as your orator is informed) a thousand acres of military land on Trade-water, for which he was to give $1000, provided it was worth that sum of money in the estimation of two or three gentlemen named in the contract,

entered into by himself and the said Shackelford, which contract is now in the State of Kentucky, and which he has for some time past endeavored to get from there, but has hitherto been disappointed, and to which your orator refers, and prays that if it can be obtained, that it may be taken as a part of this his bill; that he also at the same time purchased seven hundred acres of land lying on the Ohio, in the State of Ohio, for which he gave three hundred and fifty pounds in cash, the whole of the purchase money for the two said tracts of land at that time amounting to £650; that after he had paid the s'd sum of £350, which was considered as the first payment, he gave his bond for £300, the balance of the purchase money, which bond he has never since seen, but has been informed by the said Shackelford that it is destroyed; and in order that your orator might rest satisfied respecting it, the said Shackelford has given him a receipt in full against it; that it was further agreed between your orator and the said Shackelford, that they would meet in the State of Kentucky, the year after the purchases were made as aforesaid, and to have a settlement respecting them; that your orator attended as agreed upon, but that the said Shackelford did not on his part attend, until he, your orator, had left the State; that Shackelford, after getting to the s'd State of Kentucky, and not having met with your orator, undertook to sell the said 700 acres of land, for which he had rec'd of your orator £350 cash, as before stated, and for which your orator had a deed executed to him, by Beverly Roy, at the time the purchase money was paid (it having been patented in the name of the said Roy;) that your orator, after waiting about two years for the money, for which the s'd Shackelford had sold the said 700 acres of land, which amounted to considerably more than he then owed the said Shackelford, for the purchase aforesaid, it was agreed between them that if the said Shackelford would assign to him the am't. for which he had sold the land, that he would give the said Shackelford his bond for the purchase money, interest, &c., that was then due to him from your orator for the purchases aforesaid, which was done on the 17th day of May, 1803, as will appear by the bond, or bill penal filed, in the suit of Wm. Chamberlayne, ass'ee. of the said Shackelford, vs. your orator in this court, and which is the bill penal given on the consideration aforesaid; that your orator entered into the agreement as aforesaid for the purpose of recovering the money as soon as possible, from Philip Buckner, the gentleman to whom the said Shackelford had sold the said 700 acres of land; that soon after the last agreement was entered into, he sent all the papers respecting the sale of the s'd land, to the western country, by John H. Upshaw, with directions to use his best endeavour to get the money; that he, as your orator was informed by him, put the papers in the hands of a gentleman for collection, and that a suit was ordered, the fate of which is as yet unknown to your orator; and your orator did conceive that altho' the s'd bill is made

payable at a certain day, yet it was understood by himself and the said Shackelford, that the said bill penal was not to be paid until the money for the sale of the said land was recovered, provided due diligence was used in recovering it, which he believes has been used; that your orator offered the said Shackelford, that if he would deduct the balance that was then due to him from your orator, from the amount of the sum for which the 700 acres of land was sold to Buckner, and give his bond to your orator for the balance, that he would wait for him until the money could be recovered of said Buckner, to which he would not consent, but agreed to assign the papers respecting the sale to said Buckner, to your orator, and that your orator might give his bond, which was done by your orator, rather than to have nothing on his part to shew for the sale of the said 700 acres of land, which had been improperly made by the said Shackelford, and to prove that entitled to your orator in case of death or otherwise.

Your orator further states, that by the contract as before mentioned, as being in the State of Kentucky, the said Shackelford bound himself to make to your orator a good and legal title to the said land, which as yet has never been done, nor has the said Shackelford ever, as your orator believes, obtained a patent for the same, or assigned to your orator a plat and certificate of survey, so as to enable him to obtain one, or in any other manner enable him to obtain it; true it is that two or three deeds have been made for the said land, but they have all run out of date, in consequence of your orator or his agents not being able to get the parties who executed the same, or their agents to acknowledge either of them in the State where the land lies, except one made since Christmas, which they have promised, as before they have done, to send an agent to that country to acknowledge, but which deed your orator does not think complete, and in conformity with the bond of s'd Chamberlayne and Shackelford, as by reference to the s'd deed and bond will more fully appear; notwithstanding the premises the s'd Shackelford has since assigned away the said bill penal, and as suit has been commenced on it in this court, and a judgment thereon, and your orator threatened with an ex'on, all which actings and doings of the said Shackelford and ass'ee. are contrary to equity; and in as much as your orator is remediless in the premises, save by the interference of this court, and that all further proceedings in the said suit may be stayed until this matter can be heard in equity, and a deed made and acknowledged in a proper manner may it please you worships to grant to your orator the Commonwealth writ of Sup., and Inj'n, &c. And now, at this day, to wit, at a court held for the said county, on the 21st day of May, 1806, on the motion of the plaintiff to stay all further proceedings on a judgment obtained, in this court by the defendant, against him for the sum £800, current money of Virginia, the debt, and seven dollars and fifty cents (costs,) to be discharged

by the payment of three hundred and twenty-eight pounds, like money with interest, at six per centum per annum, from the 1st day of September, 1804, till payment, and the costs; the same is granted on his giving bond with security in the clerk's office in one month from this time. 1806, June 17th, continued for bond—1806, July 22d, bond filed and subpœna awarded, and abatement as to Shackelford by his death.

And which sup'a, so awarded, together with the sheriff's return thereon follows here, to wit:

"The Commonwealth of Virginia, to the Sheriff of Essex County, Greeting:

We command you to summon William Chamberlayne, to appear before our justices of our County Court of Essex, at the court house thereof, on the third Monday in August next, then and there to answer a bill in chancery exhibited against him in our said court, by Edwin Upshaw, and that he shall in no wise omit under the penalty of one hundred pounds, and have then there this writ.

Witness, John P. Lee, clerk of our said court, this 25th day of July, 1806, and 31st year of the Commonwealth.

JNO. P. LEE.

Memo.—This is to injoin the above named William Chamberlayne, his agents and attornies, and all others concerned, from all further proceedings on a judgment obtained by the s'd Chamberlayne as assignee of Lyne Shackelford, against said Edwin Upshaw, in our County Court of Essex, for £800 current money of Virg'a, (debt,) and $7 52 cents (costs;) but to be discharged by payment of £328 0 0, with interest at six per centum per annum from the 1st day of September, 1804, till payment, and the costs, until the matters thereof can be heard and determined in equity.

Teste— JNO P. LEE, *Clk.*"

1806, Aug. 20th, cont'd for answer—Sept. 16th, cont'd for answer, Oct. 21st, same—November 19th, same—December 16th, same—1807, January 20th, cont'd, for answer—February 17th, same—March 18th, same—April 21st—May 20th—answer filed and time for replication, and which answer so filed and follows here, to wit:

"The answer of Wm. Chamberlayne, in his own right, and as ex'r, &c. of Lyne Shackelford, dec'd, to the bill of complaint exhibited against him in Essex County Court, by Edwin Upshaw.

This defendant, saving to himself now and all times hereafter, all and all manner of benefit of exception to every error and imperfection contained in the bill of the said plaintiff, for answer thereto, or to so much thereof as he is advised is material for him

to answer to, he answereth and saith: that he is totally unacquainted with the contracts, if any such there were, stated in the bill to have been made between the plaintiff and Lyne Shackelford, respecting the sale of the land on trade water, or for the sale of 700 acres in the Ohio State, and for which the plaintiff states he has paid £350 cash; nor does he know any thing of a bond of the plaintiff for £300, for the balance due for the said purchase, as stated in the bill, or that the said Shackelford sold any land for the plaintiff, and without the consent of the plaintiff as stated in the bill, except that this defendant has seen an acknowledgement in writing, signed by the plaintiff, by which he acknowledged to have received from said Shackelford full satisfaction for a contract heretofore entered into between them, for the sale of 1000 acres of land, lying upon Poages creek, (on the waters thereof,) in Kentucky, surveyed in name of Javin Miller, and 700 acres in the north-western territory, in State of Ohio, surveyed in the name of Beverly Roy; and that the said Shackelford had sold the said 700 acres, surveyed in the name of Beverly Roy, with the said plaintiff's consent, to Philip Buckner of Kentucky, and assigned to the plaintiff the contract therefore, and authorized the plaintiff to receive from the said Buckner the money therefore, and thereby bound himself under his seal, on receiving the money from the said Buckner, to convey the said land to him, as the plaintiffs had prior thereto received a deed for the same from Beverly Roy, by which this defendant conceives it appears that the said Shackelford did not sell the plaintiff's land, without his consent, as stated in his said bill, which acknowledgement is dated May 16th, 1803, and was by this defendant found among the said Shackelford's papers; and except also, that this defendant hath found among the said Shackelford's papers a receipt, signed by the plaintiff, dated the 7th of May, 1803, for sundry papers to be by the plaintiff delivered to one Philip Buckner; and this defendant further answering, saith, he is totally ignorant of any connection between those transactions, and the bill penal given by the plaintiff to Lyne Shackelford, and by him assigned to this defendant, unless they related to a tract of land, which this defendant authorized the said Shackelford to sell, and on acc't of which he admits the said Shackelford assigned to him the said bill penal; and if such was the case, the plaintiff under his hand and seal, as aforementioned, acknowledged he had received full satisfaction from the said Shackelford; and even if the complainant had any ground of complaint against the said Shackelford, it must have proceeded from the transactions on account of the seven hundred acres, which, under any circumstances, this defendant considers it would be iniquitous, should affect him. And this defendant further answering, saith, that he knows nothing of any agreement between the plaintiff and said Shackelford, that the payment of the money, according to the said bill penal, should be suspended, until the money should be re-

covered from the said Buckner, in the plaintiff's bill mentioned, or due diligence used; nor does he believe there ever was any such agreement, nor does he know whether or not the plaintiff has used due diligence in prosecuting the demand to recovery; and this defendant further answering, saith, that he executed a deed at one time, to the plaintiff, for the land mentioned in the deed annexed to the bill, and re-acknowledged it another time, and was at all times willing to do any thing consistent with good faith, which the plaintiff should require; altho' he did not, and now does not consider, that the negligence of the plaintiff in failing to have his deeds recorded, should prejudice; and from that principle, when informed by the plaintiff that his deed had not been recorded, this defendant wrote to him a letter, the contents whereof will fully appear by a copy thereof, proved by the affidavit of a witness, which is hereto annexed, and prayed to be taken as part of this his answer, in pursuance whereof, the plaintiff forwarded to this defendant a deed theretofore made, with a direction endorsed, which will appear by the deed and endorsement hereto annexed, and prayed to be taken as part of this his answer, in conformity with which this defendant made the deed annexed to the bill, and was willing to do what also was thought proper by the plaintiff, and consistent with propriety. And the defendant further answering, saith, that in the month of March, after this defendant instituted a suit on the said bill penal, the plaintiff applied to this defendant to indulge him, and said that his situation did not admit of his paying the money so soon as a judgment would be obtained, and that if he was disposed to procrastinate, he could prevent the recovery of the money a considerable time; but this defendant did not accede fully to his propositions, a part of which was, that he would confess a judgment, and the other part related to the period of payment, and which this defendant did not think would suit him, but addressed a letter to this defendant's counsel, which he delivered to the plaintiff.

KING WILLIAM COUNTY, *to wit:*

This day William Chamberlayne appeared before me, and made oath to the foregoing answer.

Given under my hand, this 14th day of April, 1807.

MONTAGUE WILLIAMS.

The acknowledgment referred to in the said answer follows here, to wit:

"I acknowledge to have received of Lyne Shackelford, full satisfaction for a contract heretofore entered into between him and myself, for the sale of one thousand acres of land, lying upon

Poages creek, (or the waters thereof,) in Kentucky, surveyed in the name of Javin Miller, and seven hundred acres in the Northwestern territory, or State of Ohio, surveyed in the name of Beverly Roy; he, the said Shackelford, having, with my consent, sold the seven hundred acres of land, surveyed in the name of Beverly Roy, to Philip Buckner, of Kentucky, and he having assigned to me the contract therefor, with said Buckner, and authorized me to receive from said Buckner the money due from him for the same; and I hereby agree, upon the receiving the money from said Buckner, to convey to him the said seven hundred acres of land, the same having been heretofore conveyed to me by Beverly Roy, at the request of said Shackelford.

Witness my hand and seal, the sixteenth day of May, 1803.

(Signed,) EDWIN UPSHAW.

Teste: (Signed,) JOHN ROANE.

I do hereby certify, that Edwin Upshaw signed his name to a paper, of which what is written on the other side is a copy, in my presence, or acknowledged his name signed to the same, in my presence, which of the two I do not now certainly recollect, and that I signed my name as a witness thereto.

Witness my hand, this 21st day of April, 1807.

JOHN ROANE.

June 16th, 1807.

This day shewed this to Mr. Edwin Upshaw, who agreed that it should be of equal validity, in his inj'n against Wm. Chamberlayne, with the original, which he examined.

J. WEBB.

The acknowledgment referred to in the said answer, dated 7th May, 1803, follows here, to wit: Rec'd, the 7th May, 1803, of Lyne Shackelford, the following papers: An order drawn by Philip Buckner upon Charles Copland, directing him to pay to said Shackelford the amount of Reuben Coatts' bond to said Buckner, when recovered; a patent for one thousand acres of land to Wm. Chamberlayne, dated 6th January, 1802, signed by Thos. Jefferson, President of the United States, the land entered and surveyed in the name of Javin Miller; a deed from Wm. Chamberlayne to Philip Buckner, for the above one thousand acres of land; John Marshall's rec't for a bond due from Reuben Coatts to Philip Buckner; all of which are to be delivered to said Buckner.

(Signed,) EDWIN UPSHAW.

Teste: (Signed,) JOHN ROANE.

I do hereby certify, that Edwin Upshaw either signed his name to a paper, of which the above is a copy, in my presence, or acknowledged his name signed to the same, in my presence, which

of the two I do not now certainly recollect, and that I signed my name as a witness thereto.

Witness my hand, this 21st day of April, 1807.

JOHN ROANE.

June 16th, 1807.

This day shewed this to Mr. Edwin Upshaw, who agreed that it should be of equal validity with the original, in his injunction against Wm. Chamberlayne, he having examined it with the original.

JAMES WEBB.

The letter and affidavit, also referred to in the said answer, follows here, to wit:

New Kent, November 7th, 1805.

Sir,—When I saw you in March last, at King & Queen court-house, you informed me, that you had not been able to record either the first or second deed I had made you, for the tract of land you purchased of Lyne Shackelford, Esq.; I then told you, that I w'd renew the deed at any time you w'd prepare it; you appointed a day to meet me at William's Ferry; I met agreeable to appointment, but you not coming, nothing could be done; I am now ready and willing to renew the deed, and if it is necessary to have an agent to acknowledge it, where the land lieth, my nephew will start for the western country next week, and I will give him a power of attorney to do it. If you still wish another deed, prepare it and send it by Mr. Ovil Row, and I will execute and send it on, to be recorded, if it's your wish it sh'd be done; also send the two deeds I have made you.

I am y'r most ob't,

WM. CHAMBERLAYNE.

ESSEX COUNTY, *to wit:*

Ovil Row this day made oath before me, a justice of the peace for the county aforesaid, that he delivered a true copy of this letter to Edwin Upshaw, on this day.

Witness my hand, this 8th day of November, 1805.

L. BOOKER.

The deed and endorsements, also referred to in the said answer, follows here, to wit:

This indenture, made the sixth day of May, in the year of our Lord one thousand eight hundred and three, between William Chamberlayne, of the county of New Kent, in Virginia, of one part, and Edwin Upshaw, of the county of Essex, in the same State, of the other part, witnesseth: that for and in consideration of the sum of one thousand dollars, current money of Virginia, by the said Edwin Upshaw to the said William Chamberlayne in hand paid,

the receipt whereof is hereby acknowledged, he, the said William Chamberlayne, hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell unto the said Edwin Upshaw, his heirs and assigns, a certain tract of land lying in the State of Kentucky, containing, by survey, one thousand acres, being a tract of land purchased by the said Chamberlayne from John Armstrong, which was entered and surveyed for Javin Miller, by virtue of a military land warrant, granted by the Commonwealth of Virginia to the said Miller, for his services in the late Virginia line of the continental army, and bounded as follows: Beginning upon the waters of Poages creek, at the north-east corner of Benjamin Mosleys' entry, numbered two hundred and seventy-one; thence running east four hundred poles; thence north four hundred poles; thence west four hundred poles; thence to the beginning; with all the appurtenances thereunto belonging, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, claim, and demand whatsoever, of him, the said William Chamberlayne, of, in, and to the same: to have and to hold the said tract of land, with its appurtenances, unto him, the said Edwin Upshaw, his heirs and assigns, forever, free from the claim and demand of all and every other person or persons whatsoever.

In witness whereof, the said William Chamberlayne hath hereunto set *their* hand and seal, the day and year above written.

WM. CHAMBERLAYNE. [L. S.]

Sealed and delivered in presence of
LYNE SHACKELFORD,
WM. MASSIE,
WILLIAM WILKINSON.

VIRGINIA, *New Kent county, to wit:*

This day William Chamberlayne personally appeared before us, Joseph Foster and Robert Boyd, two of the commonwealth's justices of the peace, for the county aforesaid, and acknowledged the within indenture to be his act and deed.

Given under our hands, the sixth day of May, 1803.

JOS. FOSTER,
ROBT. BOYD.

I do hereby certify, that the above named Jos. Foster and Robt. Boyd are acting justices of the peace, duly commissioned and sworn, for the county of New Kent, and that due faith and credit ought to be given to their acts as such.

In testimony whereof, I, William B. Clayton, clerk of the court of New Kent county, have hereunto set my hand [L. S.] and affixed the seal of the county, this 6th day of May, 1803, and 27th year of the Commonwealth.

W. B. CLAYTON, *Clk.*

VIRGINIA, *New Kent county, to wit:*

This day William Chamberlayne personally appeared before us, Joseph Foster and Robt. Boyd, two of the commonwealth's justices of the peace, for the county aforesaid, and re-acknowledged the within indenture to be his act and deed.

Given under our hands, the 27th day of March, 1804.

JOS. FOSTER,
ROBT. BOYD.

ESSEX COUNTY COURT OFFICE, *October 21st*, 1829.

I do hereby certify, that the foregoing is a true copy of an original deed, with the certificates of the acknowledgment thereof, filed in a suit in chancery, lately depending in the county court of Essex, wherein Edwin Upshaw was plaintiff, and William Chamberlayne defendant, which said original has been withdrawn from among the papers in said suit, by the plaintiff, under an order of the said court, of 19th October, 1829, permitting him to do so, and which by said order a copy of said original is directed to be made and filed among the papers in the said cause.

Given under my hand, the date above written.

JAMES ROY MICON, Jr.
D. C. Essex County Court.

1807, June 16th—time for repl'n and notice for dissolution, to 1st day of July court next.

1807, July 21st—time for repl'n and notice for dissolution cont'd.

1807, Aug't 19th—time for repl'n and notice for dissolution cont'd.

1807, Sept. 22d—time for repl'n and notice for dissolution continued.

1807, Oct. 20th—time for repl'n and notice for dissolution continued.

1807, Nov. 19—same.

1807, Dec'r 22d—time for repl'n and notice for dissolution continued.

1808, Jan'y 19th—same.
" Feb'y 16—same.
" March 23d—same.
" April 19th—same.
" May 19th—same.
" June 21st—same.
" July 19th—same.
" Aug't 16th—same.
" Sept. 20th—same.
" Oct. 18th—same.
" Nov. 22d—same.
" Dec'r 20th—same.

1809, May 20th—same.
" June 20th—same.
" July 18th—same.
" Aug't 26th—same.
" Sept. 19th—same.
" Oct. 17—same.
" Nov'r 21—same.
" Dec'r 19—same.
1810, Jan'y 16—same.
" Feb'y 20—same as last.
" March 24—same.
" April 17—same.

1809, Jan'y 17th—same.
" Feb'y 21st—same.
" March 23d—same.
" April 18th—same.
1810, May 26—same.
" June 19th—same.
" July 17th—same.
" Aug't 23d—same.

At a court held for the said county, on the 17th of September, 1810, came the parties aforesaid, by their attornies, and on the motion of the defendant for a dissolution of this injunction, the same is heard on the bill, answer and exhibits; on consideration whereof, it is decreed by the court that the injunction be dissolved, *as* the same is accordingly hereby dissolved, and that the defendant be entitled to the benefit of his judgment at law; and further that the defendant recover of the plaintiff his costs, by him in this behalf expended.

1810, Sept. 18th—cont'd for replication. Oct.16—same.

On the 20th November, 1810, and at a court held for the said county, the defendant appears, by his attorney, and the plaintiff having failed to show cause against the dismission of this injunction, it is therefore considered by the court, and decreed and ordered accordingly, that the same be dismissed; and further, that the defendant recover of the plaintiff his costs, by him about his defence in this behalf expended.

The following are papers read as evidence upon the trial of this cause, to wit:

The affidavit of Bartlet Smith Woodward, who being sworn, saith, that in the month of March, eighteen hundred and six, he was at the house of William Chamberlayne, in New Kent county, and while there he saw Mr. Edwin Upshaw, and heard a conversation between said Upshaw and Chamberlayne; Upshaw observed that he expected said Chamberlayne w'd obtain a judgment against him at the next Essex court, which was to commence the Monday following, but *said* he was quite unprepared to pay it. He *said* he could procrastinate the payment if he was disposed to do so, but w'd rather not; and if said Chamberlayne would give him time to make arrangements to pay the debt, he w'd confess a judgment. Chamberlayne replied, that he had no wish to injure him; that he sh'd want six hundred dollars by the first of August; if that was paid, he could wait till Christmas for the ballance. Upshaw said six hundred dollars sh'd be paid at that time, provided he would wait until March, eighteen hundred and seven, for the balance; Chamberlayne objected to waiting longer than Christmas, alledging that he had workmen engaged about a mill, and expected he sh'd want the balance by Christmas, but if he could do without it till March, he w'd. Upshaw desired him to write to his atto., James Webb, Esq., to that effect, which was done, and the letter delivered to Upshaw, who appeared to be pleased with what had been done. Said Chamberlayne desired this affiant to take notice of the conversation, for he did not like Upshaw's observation, that

he could procrastinate the payment of the money, lest he should put his knowledge in practice.

BARTLET SMITH WOODWARD.

KING WILLIAM COUNTY, *to wit:*

This day Bartlet Smith Woodward personally appeared before me, a Justice of the Peace for said county, at my store house, in King William county, agreeable to the annexed notice, and made oath to the foregoing affidavit; given under my hand, this 17th day of July, 1807.

MONTAGUE WIILLIAMS.

MR. EDWIN UPSHAW:

Take notice, that on Friday, the seventeenth day of the present month (July,) between the hours of six in the morning and six in the evening of said day, at the store house of Mr. Montague Williams, in King William county, I shall take the affidavit of Mr. Bartlet Smith Woodward and others, to be read in the injunction now depending in the worshippful court of Essex county, wherein you are plaintiff, and myself as executor of the last will and testament of Lyne Shackelford, deceased, and in my own right, defendant.

I am your most ob't,

WILLIAM CHAMBERLAYNE.

July 3d, 1807.

ESSEX COUNTY, *to wit:*

Hugh Massie came personally before me, a Justice of Peace for the aforesaid county, and made oath on the Holy Evangalist, that he did on this day deliver a true copy of the within notice to Mr. Edwin Upshaw. Given under my hand, this 4th day of July, 1807.

J. BOHANNON.

To the Honorable Samuel Tyler, Esquire, Judge of the Williamsburg Chancery District Court:

Humbly complaining, sheweth unto your honor, your orator, John Horace Upshaw, that on the 15th day of December, anno Domini, 1805, your orator and Edwin Upshaw entered into a covenant, which was signed and sealed by each of them, a copy of which is hereto annexed, and prayed to be received as a part of this bill, as the original was by mutual consent committed to the safe keeping of Maj. Archibald Ritchie, of the county of Essex, by which it will appear, that your orator contracted to sell to the said Edwin Upshaw a tract of land situate in Essex county, and adjoining the land on which Mrs. Mary Upshaw resided, which tract was to include all the land between the county road, running thro'

your orator's land and Hoskin's swamp, called Chaney Gatewood, and as much of your orator's land on the other side of the road, and adjoining Capt. S. Rennolds' land, together with that part of Andrew Gatewood's tract that your orator legally purchased of William Upshaw, or so much thereof as would make the quantity of five hundred and fifty acres, for which the said Edwin Upshaw covenanted to pay to your orator £1,430, lawful money of Virginia, if he did not comply with the following specified terms, to wit: that he, the said Edwin should convey to your orator 1000 acres of military land lying in the State of Kentucky, being a tract of land purchased by the said Edwin Upshaw of William Chamberlayne, who purchased it from John Armstrong, and which was entered and surveyed for Javin Miller, by virtue of a military land warrant, granted by the Commonwealth of Virginia to the said Miller, for services, and bounded as follows: beginning upon the waters of Poage creek, at the north-east corner of Benjamin Moseley's entry, No. 271; thence running east, four hundred poles; thence north, four hundred poles; thence west, four hundred poles; thence to the beginning, with all the appurtenances thereunto belonging; and the said Edwin Upshaw further covenanted to convey to your orator, one indisputable and indefeasible title to the same, and to give a bond of indemnity to your orator, and to assign to your orator £500 of the debt due from Philip Buckner of Bracken county, in Kentucky, to the Honorable Lyne Shackelford, which had been duly assigned by the said Shackelford to the said Edwin Upshaw; and it was agreed by the said Edwin Upshaw with your orator, that if the said money was not recovered and received of the said Buckner in 18 months, that your orator should re-assign to the said Edwin Upshaw the said claim, and that the said Edwin Upshaw should pay to your orator the sum of £500, with interest from the date of the said contract; and the said Edwin further agreed to pay, by the 1st day of March, 1806, to Sthreshly Rennolds, Esquire, for the benefit of his brother, John Rennolds, of Loudon, £100, Virginia currency, and to Mr. Samuel Roane of Norfolk, by the 1st of March, 1806, the sum of £105 Virginia currency. And your orator covenanted, on his part, to convey to the said Edwin Upshaw, a free and unincumbered title to the said 550 acres of land, situated as aforesaid, after the said Edwin Upshaw had complied with the above covenants, and *and* paid the sum of £125 to your orator, which the said Edwin Upshaw agreed to pay on the return of Tibb's vessel from Norfolk, which the said Edwin engaged to load within eight days after its arrival; but should the vessel not arrive, or any thing occur to prevent the said Edwin from shipping the corn, he covenanted to pay the above sum of £125 by the 15th of December, 1805. That your orator, in conformity with, and in consequence of his covenant as aforesaid, permitted the said Edwin Upshaw to enter upon and cultivate the said tract of land, the year succeeding the date of the said contract, and he still holds, occu-

pies and enjoys the same; and your orator has been willing and ready to convey the said premises to him, provided he would perform the conditions precedent.

Your orator admits, that the payments to Samuel Roane and Sthreshly Rennolds, for his brother, and of the £125 to himself, your orator, were made, and that a draft for the £500 on one Hannon, pointing at the debt due from Philip Buckner, has been received by your orator, and has been duly protested. That since the protest of the said draft, a payment has been made by the said Edwin, which is credited upon the draft, and an action at law is now pending against him for the balance due thereon. That no title to the land in Kentucky has been ever made to your orator by the said Edwin Upshaw, and your orator has sustained considerable inconvenience and loss from the want of title; nor has even the possession of the land been delivered to your orator. That your orator has requested the said Edwin Upshaw to give to him a clear, indisputable and indefeasible title to the said land, and to pay him interest at the rate of 6 per cent. on £600, the stipulated value of the land in Kentucky, from the 15th day of November, 1805, when the contract was first made, until seisen of the said land should be made to your orator; or if he should be unable to give seisen in the said land to your orator, that he would pay so much money in lieu thereof as the said land and appurtenances may now be worth, according to the opinions of those who are acquainted with the said land and its appurtenances. But now, so it is, may it please your honor, the said Edwin Upshaw, pretending at one time that he has made an indisputable and indefeasible title to your orator to the said land, and at another time pretending that your orator cannot make a good title to the 550 acres of land, situate in Essex county, (all which pretensions are delusive,) refuses to comply with the reasonable request and demand of your orator. In tender consideration, and to the end therefor, that the said Edwin Upshaw, who your orator prays may be made defendant hereto, with apt words to charge him, may upon his corporal oath, full, true and perfect answer make to all and singular the premises, as fully as if now again repeated and interrogated, and more especially, that he may say whether the annexed copy of the contract does not state the agreements and stipulations made by him and your orator.

Is it not a true transcript from the original, and was not the original by mutual consent lodged in the hands of Major Archibald Ritchie, for safe keeping?

Has he not held, occupied and enjoyed the 550 acres of land in Essex, ever since the 15th November, 1805, and does he not still hold it?

Has he ever conveyed title and delivered possession of the land in Kentucky, to your orator, and has not the draft for the £500 on Philip Buckner, or his agent, been protested?

And that your honor would decree, that the said Edwin Upshaw

shall convey to your orator an indisputable and indefeasible title to the 1000 acres of military land lying in the [illegible] of Kentucky, which was purchased by the said Edwin Upshaw of William Chamberlayne, who purchased the same of John Armstrong, which land was entered and surveyed for Javin Miller, by virtue of a military land warrant granted to the said Miller for services by the Commonwealth of Virginia, according to the boundaries thereof above recited from the said covenant, and that he pay to your orator interest at the rate of 6 per cent. on £600, the supposed value of the said land at the time of the contract, from the 15th day of November, 1805, till the said deed shall be made; or, that if the said Edwin Upshaw shall be unable to make such a conveyance for the said land as he stipulated to make, that he shall be decreed to pay to your orator so much money as the said land may be now worth, and that such further or other relief may be granted to your orator as the nature of his case may require, and as equity and justice may warrant; may it please your honor to grant to your orator the Commonwealth's writ of subpœna to the said Edwin Upshaw directed, &c., &c.

CARTER BRAXTON, *P. Q.*

The answer of Edward Upshaw to the bill of complaint exhibited against him in this honorable court by John H. Upshaw.

This defendant, now and at all times, saving and reserving to himself, all and every advantage and benefit of exception to the many gross errors in the complainants' said bill, set forth and alleged, for answer thereto, or to as much as he is advised to be material or necessary for him to make answer unto, saith, that the articles referred to, and made a part of the bill, is a true copy of the original, which was executed by the complainant and this defendant; that in conformity to the said articles, your respondent caused and procured a good and substantial deed of indenture to be executed by William Chamberlayne and Margret, his wife, which said Margret relinquished her right of dower, in due form, for the one thousand acres of land situated in the State of Kentucky, mentioned in the said articles of agreement, which land was purchased of William Chamberlayne and wife, by your respondent, who purchased the same of John Armstrong, and the same that was entered and surveyed for Javin Miller, by virtue of a military land warrant, granted by the Commonwealth of Virginia, to the said Miller, and bounded as described by the articles; that the said deed having been duly executed the 9th day of December, 1805, was thereafter tendered to the said complainant in the county of Essex, in open court, on the day of which said deed had been that day delivered by Wm. Chamberlayne, and wife, to this deft. under a contract which existed between this defendant, the said Wm. Chamberlayne and a certain Lyne Shackelford, now deceased, executor at that

time; this deed the complainant refused to accept under a pretence of its not securing to him such a title to the said 1,000 acres of land as this defendant was bound to make, by the articles aforesaid; but it was refused in reality for no other reason, as this deft. believes, but to raise a difficulty, under pretence of which he meant to vacate that part the contract respecting the Kentucky land. This defendant has been always anxious to make the complainant a good title to the said land, and would, if he could, procure it, and indulge him in any kind he wished; he thinks it a good deed, however; it is such a one as he got, and he submits it to the court for its judgment, and for this purpose prays the original articles, a counterpart of which is annexed, and the deed aforesaid, which has been deposited in the office of the County Court of Essex, from the day it was tendered for the said complainant's acceptance, to be taken as a part of this answer. And the defendant states further, that the deed aforesaid was made by Chamberlayne and wife, not to this defendant, but to the complainant, by and with his consent, agreeable to, and upon an arrangement made subsequent to the execution of the articles aforesaid, and to secure the title conveyed by said deed. This deft. has been always willing to enter into such a bond as was required by the articles, but deemed it unnecessary until the complainant had approved of and accepted the deed. As it respects the sum of £500, which has been assigned by Lyne Shackleford to this defendant, and due from a certain Philip Buckner, in Bracken County, Kentucky, this defendant, soon after the contract was executed, and as soon as required, gave the compt. an order for that sum, drawn upon a certain John O'Bannon of Kentucky, into whose hands the evidence of the claim had been placed for collection, the preceding year, by the complainant, who had gone to that country as this defendant's agent, for the purpose of collecting that debt and doing other business: this circumstance is mentioned to shew that the complainant was much better apprised of the nature of the debt due this defendant, in Kentucky, and *this* situation in which the business was, than this defendant could be; notwithstanding the premises, as soon as this deft. was apprised that the order drawn upon John O'Bannon, (a mere agent and made so by the complainant, as stated above,) had not been honoured by payment, and which was not until October, 1807, he immediately paid him the sum of £293, 7, 9, as per receipt, hereto annexed, and prayed to be taken as a part of this answer, and which is dated the first of October, 1807, leaving a balance of about £207 and interest, which is the only sum of money arising out of the contract, not liquidated; all the other sums having been paid, as this deft. will shew, and which this defendant hath retained for a debt due from the complt. as executor of his father, John Upshaw, to this deft., which amounts to much more, as this deft. believes, than that sum and interest, or any thing which can be due the complainant, under this contract aforesaid, an account of which this

deft. hopes this court will direct, as he conceives it a fair and just claim for which the complt. is, and has the means of being responsible. This deft. also states, that the sum of £100 agreed to be paid to Rennolds, the sum of £105 to be paid to Samuel Roane, and the £125 agreed to be paid from corn to be shipped to Norfolk, have been duly paid off and discharged, as per receipt hereto annexed, and prayed to be taken as a part of this answer. This deft. humbly conceives that he has fully and equitably complied with all the terms of his contract, as far as above stated and as far as has been in his power, and altho' he is in possession of the land purchased of the compl., he has never had a title to the same, which he hopes this court will decree him, as it will appear upon a fair account that he has more than satisfied all the money due; nor will this honorable court indulge the complt. in his claim to interest on account, for the Kentucky land, as this deft. has complied with his contract in that particular, as far as he could, or was bound to do, being always ready, and still ready and willing to accompany the deed by a bond, whenever that deed shall be accepted; this deft. will finally remark, that the complainant not only personally knew the land in Kentucky, having gone there as this deft.'s agent, the year before, on that business among other things, but perfectly knew all the circumstances and the parties and source from whence he was to derive his title to the said land, he having had all the papers respecting the same, as appears from his receipt, dated 4th April, 1804, which is annexed, and prayed to be made a part of this answer.

This defendant, having now fully answered all the allegations in the complainant's bill contained, begs hence to be dismissed, with his costs, most unjustly expended.

KING AND QUEEN COUNTY, *to wit:*

This day personally appeared before me, a justice of the peace for the above county, Edwin Upshaw, and made oath to within answer, in usual form.

Given under my hand, this 9th day of May, 1809.

BENJAMIN FAULKNER.

A copy: ANT'Y ROBINSON, C. C.

Having met, this 17th day of July, 1807, at Williams' Ferry, in King William County, agreeable to notice, given by Mr. William Chamberlayne, to take affidavits, *and* have agreed to admit the following facts, which said Chamberlayne meant to prove, to wit: That the deed made by him and wife to John H. Upshaw, was at my request, and at the time this request was made, I left with Mr. Chamberlayne the original deed, which deed had run out of date for want of being recorded, having been sent to the Western country by John H. Upshaw, and could not get it recorded for want of

some person in that country to act for Mr. Chamberlayne. I also requested that Mrs. Chamberlayne should join in the deed; which renewed deed is now in the Essex office, and referred to in my bill. I will also admit, that Mr. Ovil Row came to my house and told me some short time, perhaps a month before the last deed was made, that Mr. Chamberlayne was willing to make a deed, and that a young man was going out of Mr. Chamberlayne's neighborhood, authorised, and would acknowledge the deed, in the country where the land lies. The deed which was made to John H. Upshaw was never sent to the Western but has been deposited by me in the office of Essex.

E. UPSHAW.

Test: MON. WILLIAMS.

This indenture, made the 7th day of December, in the year of our Lord one thousand eight hundred and five, between William Chamberlayne and Margaret, his wife, of the County of New Kent, in Virginia, of the one part, and John Horace Upshaw, of the County of Essex, in the same State, of the other part, witnesseth: that for and in consideration of the sum of one thousand dollars current money of Virginia, by the said John H. Upshaw to the said William Chamberlayne in hand paid, the receipt whereof is hereby acknowledged, they, the said William Chamberlayne and Margaret, hath granted, bargained and sold, and by these presents doth grant, bargain and sell, unto the said John H. Upshaw, his heirs and assigns, a certain tract of land lying in the State of Kentucky, containing by survey one thousand acres, being a tract of land purchased by the said Chamberlayne from John Armstrong, which was entered and surveyed, from Javin Miller, by virtue of a military land warrant granted by the Commonwealth of Virginia, to the said Miller for his services in the late Virginia line of the continental army; and bounded as follows: Beginning upon the waters of Poage's creek, at the north-east corner of Benj. Moseley's entry, number 271; thence running east, four hundred poles, thence north four hundred poles, thence west four hundred poles, thence to the beginning; with allthe appurtenances thereunto belonging, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever, of him, the said William Chamberlayne, in and to the same; to have and to hold the said tract of land with its appurtenances, unto him the said John H. Upshaw, his heirs and assigns forever, free from the claim and demand of all and every other person or persons whatsoever.

In witness whereof, the said William Chamberlayne and Margaret hath hereunto set their hands and seals, the day and year above written.

WM. CHAMBERLAYNE, [L. S.]
MARGARET CHAMBERLAYNE. [L. S.]

VIRGINIA, NEW KENT, *to wit:*

This day, William Chamberlayne and Margaret, his wife, personally appeared before us, Joseph Foster and Robert Armstead, two of the commonwealth's Justices of the Peace for the county aforesaid, and acknowledged the within indenture to be their act and deed.

Given under our hands, the 9th day of December, 1805.

JOS. FOSTER,
ROB. ARMSTEAD.

I do hereby certify, that the above mentioned Jos. Foster and Robert Armstead, are acting Justices of the Peace, duly commissioned and sworn, for the County of New Kent, and that due faith and credit ought to be given to their acts as such.

In testimony whereof, I, William B. Clayton, clerk of the Court of New Kent County, have hereunto [L. S.] set my hand and affixed the seal of the county, this 9th day of December, 1805, and the 30th year of the commonwealth.

W. B. CLAYTON, *C. C.*

Know all men by these presents, that I, John H. Upshaw, party to the within mentioned deed, do hereby relinquish and forever quit claim, all right, title, interest, property, claim and demand of, in and to the land and premises, conveyed by the within named William Chamberlayne and wife to me; and I do hereby declare that I claim no title thereto.

Given under my hand and seal, this 21st day of Oct'r, 1817.

JOHN H. UPSHAW, [L. S.]

Essex County Court Office, October 21st, 1829.

I do hereby certify, that the foregoing is a true copy of an original deed, with the certificates of the acknowledgment thereof, and assignment thereon endorsed, signed by John H. Upshaw, filed in a suit in chancery lately depending in the County Court of Essex, wherein Edwin Upshaw was plaintiff and William Chamberlayne defendant, which said original deed has been withdrawn from among the papers in the said suit, by the plaintiff, under an order of the said County Court of Essex, of the 19th day of October, 1829, permitting the said plaintiff to withdraw the same, and directing that a copy thereof should be made and filed among the papers of said suit.

Given under my hand, the date before written.

JAMES ROY MICON, JR., *D. C. Essex Co. Court.*

The injunction bond entered by the plaintiff for the prosecution of the injunction, follows here, to wit:

"Know all men by these presents, that we, Edwin Upshaw, John H. Upshaw, are held and firmly bound unto William Chamberlayne, ass'ee of Lyne Shackelford, in the just and full sum of eight hundred pounds current money of Virginia, to be paid to the said Chamberlayne, his certain attorney, his heirs, executors and administrators, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this 17th day of June, 1806."

The condition of the above obligation is such, that whereas the above bound Edwin Upshaw hath obtained from the County Court of Essex an injunction to stay all further proceedings, upon a judgment obtained in the said court, by the said Wm. Chamberlayne, ass'ee of Lyne Shackelford, against the said Edwin Upshaw, for eight hundred pounds current money of Virginia, (debt,) and seven dollars and fifty-two cents, (the costs,) to be discharged by payment of three hundred and twenty-eight pounds, with int. at 6 pr. centum per an. from 1st Sept'r, 1804, till payment, and the costs, until the further order of the said County Court of Essex.

Now, if the said Edwin Upshaw shall well and truly pay or cause to be paid unto the said Wm. Chamberlayne, ass'ee, the judgment and cost aforesaid, and also all such other costs, damages and charges, as shall be awarded by the said County Court of Essex, in case the injunction aforesaid shall be dissolved, then the above obligation to be void, or else to remain in full force, power and virtue.

EDWIN UPSHAW, [L. S.]
JOHN HORACE UPSHAW. [L. S.]

Executed in presence of

("Eight," in the 3d line, interlined before signed, in the original.)

ESSEX OFFICE, *to wit:*

The above named John H. Upshaw this day personally appeared before me, John P. Lee, clerk of the peace for the said county, and made oath on the holy Evangelists of Almighty God, that after paying all his debts, his estate is worth upwards of eight hundred pounds.

Given under my hand and seal, this 17th day of June, 1806.

JNO. P. LEE, *Cl'k.*

A true transcript.
Teste: JAMES ROY MICON, JR., *Cl'k.*

STATE OF VIRGINIA, *Essex County Court Office.*

I, James Roy Micon, Clerk of the County Court in the State aforesaid, do hereby certify, that the foregoing is a true and exact transcript of the record of a suit in chancery lately depending in said court, wherein Edwin Upshaw was plaintiff, and William Chamberlayne defendant, taken from the papers and records filed in my said office.

In testimony whereof, I have hereunto set my hand and caused the seal of my said office to be affixed, this 24th day of November, 1830, and in the 55th year of our foundation.

[L. S.]

JAMES ROY MICON, JR.

STATE OF VIRGINIA, *Essex County, to wit:*

I, James M. Garnett, presiding Justice of the Peace of the County Court aforesaid, in the State of Virginia, do hereby certify, that James Roy Micon, jr., whose name is signed to the preceding certificate, is, and was at the time of his signing the same, Clerk of the County Court aforesaid, duly appointed and qualified as such, according to the laws of said State, and that full faith and credit are due and ought to be given to all his official acts as such.

In testimony whereof, I have hereunto set my hand and seal, this 27th day of November, 1830.

JAMES M. GARNETT, [L. S.]

Transcript—J. H. Upshaw *vs.* E. Upshaw.

VIRGINIA.

Pleas and proceedings before the Justices of our County Court of Essex County, at the court-house of said county, and at the May term thereof, in the year of our Lord one thousand eight hundred and nine.

JOHN H. UPSHAW, *against* EDWIN UPSHAW. } In an action on the case.

Be it remembered, that on the 16th day of May, 1808, was sued out of the clerk's office of the said court, a writ of capias ad satisfaciendum, which writ, with the endorsement and sheriff's return thereon, follow in these words and figures, to wit:

"The Commonwealth of Virginia to the Sheriff of Essex County, greeting:

"We command you, that you take Edwin Upshaw, if he be found within your bailiwick, and him safely keep, so that you

have his body before the Justices of our County Court of Essex, at the court-house, on the third Monday in August next, to answer John H. Upshaw, of a plea of trespass on the case; damage eight hundred pounds—and have then there this writ.

"Witness, John P. Lee, clerk of our said court, the 16th day of May, 1808, in the 32d year of the commonwealth.

JNO. P. LEE.

(Endorsement:)

"Due by protested order, drawn by the defendant in favor of the plaintiff, on Major John O'Bannon; no bail required.

H. GAINES, *P. Att'y.*

Sheriff's return—Executed.

B. FISHER, *D. S.*
for ANDREW MONNE, *Sh'ff.*

"May 16th, 1808."

And now, at this day, to wit, at rules held in the clerk's office of the said court, on the 16th day of August, 1808, this cause is continued for the plaintiff's declaration; and rules held as aforesaid, on the 20th day of September, 1808, came the plaintiff, by his attorney, and filed his certain declaration in these words and figures, to wit:

"Essex County, *to wit:*

"John H. Upshaw complains of Edwin Upshaw, in custody, &c., of a plea of trespass on the case; for that, whereas the def't, on the 1st day of April, 1807, at the county aforesaid, being indebted to the plaintiff in the sum of five hundred pounds, with interest thereon from the 15th day of November, 1805, in consideration whereof, he, the defendant, made his certain order in writing, bearing date the s'd 1st day of April, in the year 1807, at the county aforesaid, in the words and figures following, to wit:

"Major John O'Bannon:

Sir,—Please to pay Mr. John H. Upshaw, ten days after sight, (my first order not being paid of this date,) the just sum of five hundred pounds, with interest from the fifteenth day of November, one thousand eight hundred and five, until paid, out of my claim in your hands against P. Buckner.

(Signed)

EDWIN UPSHAW.

"Which said order being afterwards, to wit, on the 16th day of July, 1807, presented to the said Maj'r John O'Bannon, he refused

to accept, as appears by endorsement on the said order, in the words following:

"Presented, but not accepted, the 16th day of July, 1807.
(Signed) WM. TODD, *N. P.*

"On account of which refusal on the part of said Major John O'Bannon to accept the payment of the said order, the pl't. did, on the 16th day of July, 1807, cause the aforesaid William Todd, notary public, duly authorised and commissioned by law, in and for the town of Lexington, and District of Fayette, within the Commonwealth of Kentucky, to protest, as well against the drawer of the said order, as against the person on whom the same was drawn, of which protest, the said def't. had notice in due time; by reason of all which premises, the said def't. as drawer of the said order became liable to pay to the pl't. the aforesaid sum of £500, with interest thereon from the 15th day of November, 1805, till paid, and the damages and charges attending such protest; and being so liable in consideration thereof, the def't. after the said 16th day of July, to wit, on the day of assumed upon himself, and to the pl't. promised to pay the said £500, with interest as aforesaid, and damages and costs attending the said protest.

"Nevertheless, the said def't. not regarding his promises made in manner aforesaid, and unmindful of his liability as drawer of the said order, (the same having been refused to be accepted, and therefore protested, in due form of law,) hitherto hath refused, and still doth refuse to pay to the pl't. the s'd £500, with interest as aforesaid, and the damages and charges imposed by law, on account of the s'd protest; whereupon the pl't. says he has sustained damage to the value of and therefore he sues.

H. GAINES, *P. Q.*

And the defendant, being arrested, and not appearing, on the motion of the plaintiff, by his said attorney, it is ordered, that unless the said defendant do appear and plead to issue at the next rules, that judgment be entered for the plaintiff for the amount of the damages which he hath sustained, by occasion of the protest of the order in the plaintiff's declaration set forth and described, with interest as therein demanded, and the costs of said protest, and the plaintiff's costs in this behalf expended.

And now, at this day, to wit: at rules held in the Clerk's Office of said court, on the 18th day of October, 1808, the defendant still failing to appear and plead to issue, on the motion of the plaintiff, it is ordered, that the last order entered at rules against the defendant in this cause, be confirmed, and that the plaintiff's damages be ascertained by a jury, at the next term of the said court.

And now, at this day, to wit: at a court held for the said county on the 22d day of November, 1808, came the plaintiff, by his attorney, and also the defendant, by his attorney, and, on his motion,

the office judgment, and order for writ of inquiry in this cause, are set aside, who thereupon pleads "Non Assumpsit," to which the plaintiff replies generally, and issue.

And now, at this day, to wit: at a court held for the said county on the 17th day of May, 1809, came the plaintiff, by Harry Gaines, his attorney, and also the defendant, by James Webb, his attorney, and thereupon came also a jury, to wit:

Thos. Evans, Jr., *foreman*,	William Smith,
Obadiah Sullivan,	Roger Shackelford,
Thomas M. Henley,	Philip Hudgin,
Richard Shackelford,	William Croxton, Sen.
Richard Miller,	Robert Clark,
James Younger, and	Francis Webb:

Who, being elected, impannelled, and sworn well and truly to try the matter in issue joined, upon their oath do say, that the defendant did assume upon himself in such manner and form as the plaintiff by replying hath alleged; and further, that the plaintiff hath sustained damages by means of the non-performance of the promises and assumption in the declaration set forth, to two hundred and ninety-four pounds six shillings, with interest from the first day of October, 1807, on two hundred and sixty-two pounds sixteen shillings and eight pence, part thereof, till paid.

It is therefore considered by the court, that the plaintiff recover of the defendant his damages aforesaid, by the jury in form aforesaid assessed, with interest on the said sum of two hundred and sixty-two pounds sixteen shillings and eight pence, at six per centum per annum, from the said first day of October, 1807, till paid; and further, that the plaintiff recover of the defendant his costs, by him in this behalf expended. And the defendant, in mercy, &c.

Costs, $8 82.

The following is a copy of the order referred to in the plaintiff's declaration, with the endorsements thereon, filed in this cause.

MAJOR JOHN O'BANNON:

SIR,—Please to pay Mr. John H. Upshaw, ten days after sight, (my first order not being paid, of this date,) the just sum of five hundred pounds, with interest from the fifteenth day of November, one thousand eight hundred and five, until paid, out of my claim in your hands against P. Buckner.

EDWIN UPSHAW.

Teste: JNO. HAWKINS.

April 1st, 1807.

Presented, but not accepted. Lexington, Ky., July 16, 1807.

WM. TODD, *N. P.*

1st of October, 1807.

I have received of Edwin Upshaw, two hundred and ninety-three pounds one and nine pence, of the within order.

JOHN H. UPSHAW.

The following is a copy of the protest subjoined to a copy of the foregoing order; also filed among the papers in this cause.

Be it known, that I, William Todd, notary public in and for the town of Lexington and district of Fayette, within the commonwealth of Kentucky, being duly commissioned and authorized by law, at the request of Henry Clay, Esquire, agent for the said John H. Upshaw, in whose favor the foregoing order was drawn, make application to Major John O'Bannon, the person on whom the same was drawn, and demanded of him acceptance thereof; to which he replied that he would not accept the said order, nor was the same either accepted or paid, or any part thereof. Whereupon I, the said notary, at the request aforesaid, have, and do hereby solemnly protest, as well against the drawer, as the person on whom the said order was drawn, and all others concerned, for all costs, charges, interest, and damages suffered or to be suffered, for the non-acceptance and non-payment of the said order. Thus done and protested, at Lexington, this 16th day of July, 1807, and in the 16th year of the commonwealth.

W. TODD, *N. P.* [L. S.]

In testimony whereof, I have hereunto set my hand and affixed my seal notarial.

WILLIAM TODD, [L. S.]
N. P. F. D.

Charges of protest, $1 66. W. T.

Upon the foregoing judgment a fieri facias issued from the clerk's office of said court on the 7th day of June, 1809, for the amount of the damages and costs expressed in said judgment, which execution was directed to the sheriff of the county of Essex aforesaid, made returnable to the third Monday in August following; delivered, Wm. Fisher, D. S., for A. Monroe, and was returned to the said office thus:

Received, of Mr. Wm. Fisher, for costs in the within mentioned judgment, eight dollars and eighty-two cents.

J. H. UPSHAW.

Rec'vd, of Edwin Upshaw, the def't in this execution, the above costs, eight dollars and eighty-two cents.

W. FISHER, *D. S.*
for A. MONROE, *Sh'ff.*

And there is an endorsement in the margin of the execution book, opposite the abstract of the said execution, in these words and figures, to wit:

"Bond given to stay this exo'n, under act 31st Jan'y, 1809."

And the following is a copy of a receipt among the files of said office:

Edwin Upshaw and Joseph Bohannon, to John H. Upshaw.

Stay bond, dated 13th July, 1809, penaltied in the sum £644 16*s.* 4*d*, conditioned for the pay't of £322 8*s.* 2*d.*

Rec'd, this 21st Oct., 1817, of the clerk of Essex, the above mentioned bond.

JOHN H. UPSHAW.

A true transcript and abstract.
Teste:

JAMES ROY MICON, Jr., *Clk.*

STATE OF VIRGINIA,
Essex County, to wit:

I, James Roy Micon, Jr., clerk of the county court of Essex, in the State aforesaid, do hereby certify, that the foregoing is a true and exact transcript of the records and proceedings in the within mentioned suit, now in my said office.

In testimony whereof, I have hereunto set my hand and caused the seal of my said office to be hereunto affixed, this fifth day of December, 1838, and 63d year of the commonwealth. [L. S.]

JAMES ROY MICON, Jr.,
Clerk.

STATE OF VIRGINIA, ESSEX COUNTY, *to wit:*

I, James M. Garnett, presiding Justice of the court of the said county, in the State aforesaid, do hereby certify, that James Roy Micon, Jr., whose name is signed to the foregoing certificate, is, and was, at the time of his signing the same, clerk of the said court, duly appointed and qualified as such, according to the laws of the said State, and that full faith and credit are due to all his official acts as such.

In testimony whereof, I have hereunto set my hand and seal, this 7th day of December, 1838.

JAMES M. GARNETT, [L. S.]

Transcript—Buckner *vs.* Coutts.

Pleas at the Capitol, in the city of Richmond, before the Judge of the court of the United States, for the middle circuit in the Virginia district, on Friday, the 30th day of May, in the year of our Lord one thousand and eight hundred.

Be it remembered, that heretofore, to wit, on the 23 day of October, 1798, was sued out of the clerk's office of the said court a

writ of capias ad respondendum, which, with the endorsement and return thereon, is in the words and figures following, to wit:

[L. S.] The President of the United States of America to the Marshal of the Virginia district, greeting:

You are hereby commanded to take Reuben Coutts, if he be found within your district, and him safely keep, so that you have his body before the Judges of the Court of the United States, for the middle circuit, at Richmond, in the district of Virginia, on the 22d day of next month, to answer Philip Buckner, (a citizen of Kentucky,) of a plea of debt for six hundred ponnds, of the valne of two thousand dollars—damage one hundred dollars. And have then there this writ.

Witness Oliver Ellsworth, Esquire, Chief Justice of the United States, at Richmond aforesaid, this *day of* 23d, in the year 1798, and in the 23d year of the independence of the United States.

WILLIAM MARSHALL, *Cl'k C. C.*

Endorsement on bond for payment of money. Bail required: J. Marshall, p. q. 12 Nov., 1798, executed: Parke Goodall, bail. Fees 2 ms. and bail bond, $2 60.

And at another day, to wit, at rules holden in the clerk's office of the Court of the United States for the middle circuit, in the district of Virginia, in the month of November, in the year 1798, came the plaintiff, by his attorney, and filed his declaration, which is in the words following, to wit:

UNITED STATES,
Middle Circuit, District of Virginia, to wit:

Philip Buckner, a citizen of Kentucky, complains of Reuben Coutts, a citizen of Virginia, in custody, &c., of a plea that he, the defendant, render to him, the plaintiff, the sum of six hundred pounds, current money of Virginia, of the value of two thousand dollars, for this, to wit: that the defendant, on the 19th day of May, in the year 1789, in the district aforesaid, by his certain writing obligatory, sealed with his seal, and to the court now here shown, the date whereof is the same day and year, acknowledged himself to be held and firmly bound to the plaintiff in the sum of six hundred pounds, to the payment of which money, well and truly to be made, he firmly bound himself, his heirs, executors and administrators; yet the defendant, though often required, the money aforesaid to the plaintiff hath not paid; but to pay the same he hitherto hath, and still doth, altogether refuse, to the damage of the plaintiff dollars; whereupon, he sues, &c.

J. MARSHALL, *P. Q.*

JOHN DOE, } Pledges of prosecution.
RICHARD DOE. }

And at another day, to wit, at rules held in the clerk's office of the court of the United States, for the middle circuit in the Virginia district, in the month of December, 1798, the defendant having given special bail and not appearing, on the motion of the plaintiff, by his attorney, it is ordered, that judgment be entered for the plaintiff against the defendant for the debt in the declaration mentioned, with interest thereon from the 19th day of May, one thousand *seven* hundred and ninety-one, till paid, and the costs, unless the said defendant shall appear and plead to issue at the next rules.

And at another day, to wit, at rules held in the clerk's office of the Court of the United States, for the middle circuit, in the Virginia district, in the month of January, one thousand *seven* hundred and ninety-nine, the defendant still failing to appear, on the motion of the plaintiff, by his attorney, it is ordered, that the last order made against him in this cause be confirmed.

And at another day, to wit, at a Court of the United States, for the middle circuit in the Virginia district, held at the Capitol, in the city of Richmond, on the 28th day of May, 1799, the following entry and plea were made in this cause.

PHILIP BUCKNER, Pl'f, *against* REUBEN COUTTS, Def't. } In debt.

Parke Goodall comes into court and undertakes for the defendant, that in case he shall be cast in this suit, he shall pay and satisfy the condemnation of the court, or render his body to prison in execution for the same; or that he, the said Parke Goodall will do it for him: whereupon, came the parties, by their attornies, and the said defendant defends the force and injury, when, &c., and for plea saith, the plaintiff his action aforesaid against him ought not to have and maintain, because he saith, that he hath paid the debt in the declaration mentioned; and of this he puts himself upon the country, and the said plaintiff likewise.

And at another day, to wit, at a Court of the United States, for the middle circuit in the Virginia district, held at the Capitol, in the city of Richmond, on the 30th day of May, 1800, the following order was made in this cause.

PHILIP BUCKNER, Pl'ff., *against* REUBEN COUTTS, Def't. } In debt.

This day came the parties, by their attornies, and thereupon came a jury, to wit: Henry S. Shore, Thomas Nicolson, Reuben

Blakey, John Murphy, Benjamin Lewis, Robert Means, Obadiah Gathwright, Charles Brittain, John F Price, Edmund Littlepage, Benjamin Brain and Nathaniel Sheppard, (John A. Smith, sworn bailiff,) who, being elected, tried and sworn the truth to speak upon the issue joined, upon their oath do say, that the defendant hath not paid the debt in the declaration mentioned, as the plaintiff, by replying, hath alledged; therefore, it is considered by the court, that the plaintiff recover against the defendant six hundred pounds, current money of Virginia, of the value of two thousand dollars, the debt in the declaration mentioned, and his costs, by him about his suit in this behalf expended; and the said defendant in mercy, &c. But this judgment is to be discharged by the payment of eight hundred and thirty-three dollars thirty-three cents, with interest thereon, to be computed after the rate of five per centum per annum, from the 19th day of May, 1791, till payment, and the costs. Upon the foregoing judgment a capias ad satisfaciendum was issued upon the 30th day of August, 1800, the return upon which is in the words following, to wit:

Not found.

BEN. MOSBY, *D. M.*
For D. M. RANDOLPH, *M. V. D.*

Another capias was again issued upon the foregoing judgment, on the 20th day of June, 1801, upon which the return is in the following words, to wit:

"Not found."

BEN. MOSBY, *D. M.*,
For JOS. SCOTT, *M. E. V. D.*

And on the 5th day of December, 1801, another capias ad satisfaciendum was issued upon the foregoing judgment, and delivered to Benj. Mosby, D. M., for Jos. Scott, M. E. V. D., which has not been returned to this office. I hereby certify, that no other capias ad satisfaciendum or fieri facias hath issued from this office on account of the foregoing judgment.

The following is a true copy of the bail bond returned to this office, and filed in the foregoing cause:

"Know all men by these presents, that we, Reuben Coutts and Parke Goodall, are held and firmly bound unto David M. Randolph, Marshal of the Virginia district, in the just and full sum of twelve hundred pounds, of the value of four thousand dollars, to be paid to the said David M. Randolph, his certain attorney, his heirs, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 12th day of November, one thousand seven hundred and ninety-eight.

The conditions of the above obligation *is* such, that whereas, Philip Buckner, a citizen of Kentucky, hath sued out of the Court of the United States, for the middle circuit, in the Virginia District, a writ of capias ad respondendum, against the body of the above bound Reuben Coutts, of a plea of debt for six hundred pounds, of the value of two thousand dollars—damage, one hundred dollars—which writ hath been duly executed: Now, if the *abound* Reuben Coutts do, and shall well and truly make his personal appearance before the judges of the said court, at the Capitol, in the City of Richmond, on the 22d day of this month (Nov'r,) next, then and there to answer the suit of the said Philip Buckner, of his debt, and damages aforesaid, and do not depart thence without leave of the said court, then the above obligation to be void, or else to remain in full force and virtue.

REUBEN COUTTS, [L. S.]
PARKE GOODALL. [L. S.]

Sealed and delivered in presence of
MOSES A. LIPSCOMB.

The following is a copy of the bond filed with the papers in this cause, upon which the foregoing suit was instituted:

"Know all men by these presents, that I, Reuben Coutts, of Chesterfield County, am held and firmly bound unto Philip Buckner, of Caroline County, in the just and full sum of six hundred pounds, current money, of Virginia, to which payment well and truly to be made to the said Buckner, or his assig*nees*, I bind myself, my heirs, executors and administrators, firmly by these presents. Sealed with my seal, and dated this nineteenth day of May, one thousand seven hundred and eighty-nine.

The condition of the above obligation is such, that if the above bound Reuben Coutts doth well and truly pay, or cause to be paid unto the above Philip Buckner, or his assigns, the just sum of three hundred pounds, like money, on or before the 19th day of May, one thousand seven hundred and ninety-one, then the above obligation to be void, else to remain in full force and virtue.

REUBEN COUTTS. [L. S.]
Teste: LEWIS BUCKNER,
JAMES SANDERSON.

The following are the credits endorsed on the foregoing bond, to wit:

"*Feb'y* 27, 1790.

Rec'd of Reuben Coutts, forty seven pounds seven shillings, in part of the within bond.

NICHOLAS BUCKNER.
Teste: AYLETT BUCKNER.

Rec'd of Reuben Coutts, two pounds ten, and 3 shillings, in part of the within.

N. BUCKNER.

Teste: ROBERT LEEDES.
March 24th, 1790.

I, Henry Gibson, Clerk of the United States Court, for the fifth circuit, and Eastern District of Virginia, do hereby certify, that the foregoing is a true copy of the record and proceedings in the suit of Philip Buckner against Reuben Coutts.

In testimony whereof, I hereunto put my name, and affix the seal of the said court, this fifth day of March, [L. S.] in the year of our Lord one thousand eight hundred and thirty-six.

HENRY GIBSON, *Clk.*"

UNITED STATES,
Eastern District of Virginia.

To all to whom these presents may come:

I hereby certify that Henry Gibson, whose attestation is affixed to the record hereto annexed, is Clerk of the Circuit Court of the United States, for the Eastern District of Virginia, duly appointed and acting as such, and that the said attestation is in due form, and full faith and credit due to the same.

In testimony whereof, I have hereunto set my hand and affixed my seal, this sixth of March, 1836.

P. P. BARBOUR, [L. S.]
Judge of U. States for Eastern District of Virginia.

Transcript—Buckner *vs.* Coutts, et als.

At a Court of the United States, for the fifth circuit, and Virginia District, holden at the Capitol, in the City of Richmond, on Monday, the 4th day of December, 1820, and in the year of the independence of the United States of America, before the Honorable John Marshall, Chief Justice of the United States: Be it remembered, that heretofore, to wit, at rules holden in the clerk's office of the Court of the United States, for the fifth circuit, and Virginia District, in the month of March, one thousand eight hundred and ten, Philip Buckner then and there exhibited his bill of complaint against Jane Coutts, Lewis Coutts, Patrick Coutts, Thomas Bendle and Elizabeth, his wife, late Elizabeth Coutts, William Frost and Polly Lesslie, his wife, late Polly Leslie Coutts, Elvira Coutts, an infant, by William Frost, her guardian and next friend, and Samuel McCraw; which bill is in the following words, to wit:

To the Honorable Judges of the Court of the United States, for the fifth Circuit, and Virginia District.

Philip Buckner, a citizen and inhabitant of the State of Kentucky, humbly sheweth unto your honors, that on the 30th day of May, in the year of our Lord 1800, your orator obtained a judgment on the law side of this honorable court, against a certain Reuben Coutts, now deceased, for the sum of six hundred pounds, of current money of Virginia, of the value of two thousand dollars, but to be discharged by the payment of eight hundred and thirty-three dollars thirty-three cents, with interest thereon, to be computed after the rate of five per centum per annum, from the 19th day of May, 1791, till paid; and the costs amounting to the sum of , as by the said judgment now remaining in this honorable court, unreversed or annulled, and unsatisfied, will more fully appear; and to which, as also an attested copy of the said judgement hereto annexed, your orator begs leave to refer, and prays may be taken as a part of this, his bill; and your orator further begs leave to state, that the said Reuben Coutts, in his life time, in order, as your orator believes, to defraud his just creditors, and among the rest your orator, he being then, and at his death, very largely indebted to many creditors, conveyed, as your orator has understood, and therefore charges, all his estate, real and personal, which was a very considerable one, to Samuel McCraw, Pleasant Younghusband and James Herron, the two latter of whom are now dead, in trust for himself, until an intended marriage should take place between him, the said Reuben Coutts, and a certain Jane New, (with whom he had cohabited for many years, and by whom he had had five children, to wit, Lewis Coutts, Patrick Coutts, Elizabeth, now the wife of Thomas Bendle, Polly Lesslie, now the wife of William Frost, and Elvira Coutts,) and from and after such intermarriage, in trust for himself and the said Jane, his intended wife, during their joint lives, and for the support of the said children; and after his death, in trust to pay to the said Jane five hundred dollars per annum, during her life, and the residue in trust for the said Lewis, Patrick, Elizabeth, Polly Lesslie and Elvira, and any children of the marriage, equally to be divided between them, as by a copy of the said deed hereto annexed will more fully and at large appear; that the said marriage, as your orator has understood, took effect; but there was no issue of the marriage; that the said Reuben Coutts has departed this life, having first duly made and published his testament and last will, and thereof appointed executors, of whom alone Lewis Coutts has proved the will, and taken upon himself the burthen of the execution thereof, as by a copy of the said will, hereto annexed, will more fully appear. That your orator has heard that the said Lewis has no assets in his hands, the whole being held under the deed of trust aforesaid, by the surviving trustee, widow and children above named, and the husbands of the two

daughters who are married, to whom your orator, by his agent, have applied for payment of the said judgment, but without effect; and your orator has no means of compelling payment, but by the aid of this honorable court, in equity, where fraudulent conveyances are set aside, as to creditors. To the end, therefore, that the said Jane Coutts, widow, and Lewis Coutts, executor of the said Reuben Coutts, deceased, and the said Lewis Coutts, Patrick Coutts, Thomas Bendle and Elizabeth, his wife, William Frost and Polly Lesslie, his wife, and Elvira Coutts, an infant under the age of twenty-one years, by a guardian to be assigned to her, to defend her in this suit, and Samuel McCraw, surviving trustee as aforesaid, all citizens and inhabitants of the State of Virginia, may be made defendants hereto, and may, upon their respective corporal oaths, full, true and perfect answers make to all and singular the premises, as fully and particularly as if the same were herein again expressly asked and interrogated; that the said defendants may be decreed to pay to your orator his said judgment, with interests and costs, out of the personal estate of the said Reuben Coutts, deceased, conveyed by the same deed of trust; or if that be insufficient, or be appropriated to the discharge of other debts, that the real estate contained in the said indenture of trust may be sold, and your orator satisfied his said debt out of the proceeds thereof; and that your orator may have such other and further relief in the premises as to your honors shall seem meet, may it please, &c. &c.

Which said process of subpœna being granted, and the defendants therewith duly served and failing to appear and answer the same, an attachment for such their contempt was awarded against them; and at a Court of the United States for the 5th circuit and Virginia district, holden at the capitol in the city of Richmond on Tuesday, the 5th day of June, 1810, the defendants upon whom an attachment for their contempt in not answering the bill of the plaintiff, hath been returned executed, still failing to appear and answer the same, the court upon the motion of the plaintiff, by his counsel, doth take his bill for confessed, and will proceed at a future day to decree the matters thereof, unless the said defendants shall on or before the first day of the term, after they shall have been served with a copy of this decree, shew cause to the contrary; and at a court of the United States for the fifth circuit and Virginia district, holden at the capitol in the city of Richmond, on Tuesday, the 27th of November, 1810, on the motion of the defendants, Jane Coutts, Lewis Coutts, Patrick Coutts, Thomas Bendle and Elizabeth, his wife, William Frost and Polly Lesslie, his wife, and Elvira Coutts, an infant, by Willam Frost, her guardian and next friend, who this day filed their answers; it is ordered that the decree *nisi* entered against them at the last term be set aside.

The separate answer of Jane Coutts, relict of Reuben Coutts, dec'd, to the bill in chancery of Philip Buckner, exhibited ag'st her and others, in the Court of the United States, for the fifth circuit and Virginia district.

This respondent, now and at all times hereafter saving and reserving to herself all exception to the inaccuracies, uncertainties and insufficiencies in the said bill of complaint contained, for answer thereto, or unto so much thereof as she is advised is material or necessary for her to make answer unto, she answereth and saith: that on the 17th day of September, 1799, she was married to Reuben Coutts named in the bill, and that previous to the said marriage, she admits the deed of marriage, articles and settlement mentioned, and referred to in the said bill, were made and entered into; but she denies that the same was fraudulent; on the contrary, she insists it was a *bona fide* transaction, and claims the full benefit thereof. With respect to the debt claimed by the plt., this respondent knows nothing of her own knowledge, but she hath often heard her husband, Reuben Coutts, in his lifetime say, that the demand was unfounded and unjust; that he had paid it to the compl't before his suit at law was instituted, and that as the said Buckner had unjustly levied an ex'on. upon his body, that he the said Reuben Coutts would die in the prison rules, before he would pay so iniquitous a demand; and this respondent further saith that it is true, that the said Reuben Coutts was in the prison bounds at the time of his death, and upon the demand aforesaid of the said Philip Buckner; this respondent denying all fraud, combination, &c., prays to be hence dismissed with her reasonable costs; without that, that, &c.

CITY OF RICHMOND, *to wit:*

This day Mrs. Jane Coutts personally appeared before me, and made oath to the foregoing answer agreeably to the usual form.

Given under my hand, this 27th day of November, 1816.

C. TOMPKINS.

The answer of Samuel McCraw.

The answer of Samuel McCraw to the bill of complaint of Philip Buckner, exhibited in the Court of the United States, for the fifth circuit, and Virginia district, against himself, Jane Coutts, and others.

This respondent, now and at all times hereafter, saving and reserving to himself all advantage of exception to the said bill, and the matters and things therein charged and contained, for answer

thereto, or unto so much thereof as he is advised is material for him to make answer unto, he answereth and saith: that some time in the month of , in the year 1799, previous to the intermarriage of Reuben Coutts, with Jane New, he was spoken to and requested, to consent to become one of the trustees in certain marriage articles and settlement, between the said Jane and Reuben, and to which he assented, and as such, together with Pleasant Younghusband and James Heron, signed the deed as referred to in the complt' bill, and made a part thereof: of whom this respondent admits himself to be the only surviving trustee under the said articles; he also admits, that he accepted the said trust, and now holds the property contained in the said deed to the uses therein expressed and limited; that no division of the said estate hath been made since the death of Reuben Coutts, as this respondent hath been advised that none can take place during the life time of Mrs. Jane Coutts, the widow of the said Reuben Coutts, without her consent and approbation, the whole estate being chargeable with the annuity mentioned in the said marriage articles, and which was reserved to her in the event of her surviving the said Reuben Coutts; this deft. knows of no fraud in this transaction, and supposing that he is by the complt's bill alone called upon to answer in relation to the said marriage settlement, and having no knowledge of the compt's demand, this respondent prays to be hence dismissed with his reasonable costs; without that, that, &c.

HENRICO COUNTY, *to wit:*

This day Samuel McCraw personally appeared before me, a magistrate for the county aforesaid, and made oath that his answer contains the truth, as far as the same respects himself, and that so far as it respects the actings and doings of others, he believes the same to be true.

Given under my hand, this 29th day of November, 1810.

THOMAS H. PROSSER.

The answers of Lewis Coutts, Patrick Coutts, Thomas Bendle and Elizabeth, his wife, late Elizabeth Coutts, William Frost and Polly Lesslie, his wife, late Polly Lesslie Coutts, and Elvira Coutts, an infant, by WilliamFrost, her guardian, assigned to defend her in this suit.

Answer—The joint and several answers of Lewis Coutts, Patrick Coutts, Thomas Bendle and Elizabeth, his wife, late Elizabeth Coutts, William Frost and Polly Lesslie, his wife, late Polly Lesslie Coutts, and Elvira Coutts, an infant, by William Frost, her guardian, assigned to defend her in this suit, to the bill of complaint of Philip Buckner, exhibited agst. them and others in the Court of the United States for the fifth circuit and Virginia district.

These respondents, now and at all times hereafter saving and reserving to themselves all advantage of exception to the said bill of complaint, and the matters and things therein contained, for answer thereto, or unto so much thereof as they are advised is material or necessary for them to make answer unto, they answer and say: that they admit the deed, marriage articles and settlement referred to in the said bill, but deny that the same was fraudulent; but on the contrary, they insist that it was a *bona fide* transaction, and claim the full benefit thereof; that the marriage of the said Reuben Coutts with the said Jane New was not prior, but was subsequent to the said deed of marriage articles and settlement, and was solemnized in conformity to the intent therein declared; that these respondents know nothing of their own knowledge respecting the transactions in the bill mentioned, and denying all fraud, combination, &c., they pray to be hence dismissed with their reasonable costs; without that, that, &c.

CITY OF RICHMOND, *to wit:*

This day the parties named in the foregoing answer personally appeared before me and made oath to this answer, in due form.
Given under my hand, this 27 day of Nov., 1810.

C. TOMPKINS.

Answer of Lewis Coutts, executor of Reuben Coutts.

The answer of Lewis Coutts, ex'or of Reuben Coutts, to the bill of compl't of Philip Buckner, exhibited against him and others, in the Court of the United States for the fifth circuit, Virginia district.

This respondent, now and at all times hereafter, saving and reserving to himself all advantage of exception to the many uncertainties, insufficiencies and untruths, in the said bill contained, for answer thereto, or unto so much thereof as he is advised is material or necessary for him to make answer unto, he answereth and saith: that as of his own knowledge, he knows nothing respecting the merits of the compl'ts' claim, but he has understood that his testator always objected to its justice, and therefore refused payment. This respondent hath lately been informed, and hopes to prove, that the said Reuben Coutts, in his life time, and before the judgment at law was rendered, paid to the said Buckner the full amount of his demand; but wherether he does or not, this respondent further saith, that he hath well and truly administered all and singular, the goods, chattles and credits, of the said Reuben Coutts, at the time of his death, which have come to his hands to be administered, as will more fully and at large appear, by an account thereof taken by one of the masters in chancery, of the Richmond District Court, and to a copy whereof this respondent refers, and prays

that the same may be taken as a part of this his answer. This respondent denying all fraud, combination, &c., prays to be hence dismissed, with his reasonable costs, without that, that, &c.

CITY OF RICHMOND, *to wit:*

This day, personally appeared before me, a magistrate for the aforesaid, Lewis Coutts, ex'r of Reuben Coutts, dec'd, and made oath to the foregoing answer in due form.

Given under my hand, this 27 day of November, 1810.

C. TOMPKINS.

Replication.

To all of which answers the plaintiff, at another day, to wit, the 6th day of June, in the year aforesaid, replied generally, and commissions were then awarded to the parties to examine and take the depositions of their witnesses. And at another day, to wit, at a Court of the United States, for the Fifth Circuit and Virginia District, holden at the capitol, in the city of Richmond, on Tuesday, the 24th day of May, 1814, on the motion of the plaintiff, by his attorney, leave is given him to amend his bill in this cause. And at another day, to wit, at a Court of the United States, for the 5th Circuit and Virginia District, holden at the capitol in the city of Richmond, on Thursday, the 23d day of November, 1815, on the motion of the plaintiff by counsel, leave is given him to amend his bill in this cause, and this suit is remanded to the rules, for further proceedings to be had therein. And now, at this day, to wit, at a Court of the United States, for the Fifth Circuit and Virginia District, holden at the capitol, in the city of Richmond, on Monday, the 4th day of December, one thousand eight hundred and twenty:

PHILIP BUCKNER, Pl't. *against* JANE COUTTS, widow, and LEWIS COUTTS, Ex'r of Reuben Coutts, dec'd, and others, defts.	In Chancery.

The parties being this day solemnly called, and not appearing, it is ordered that this suit be dismissed. The following are the exhibits filed in the above cause.

"To all to whom these presents shall come: I, Philip Buckner, of the county of Bracken, in the Commonwealth of Kentucky, send greeting:

Know ye, that reposing special trust and confidence in William Marshall, Esqr., of the city of Richmond, in the State of Virginia,

and for other considerations me thereunto moving, have made, ordained, constituted and appointed, and by these presents do make, ordain, constitute and appoint, the said William Marshall my true and lawful attorney for me, and in my name, and to my use, to ask for, demand and receive from Reuben Coutts, or his heirs, ex'rs or adm'rs, or of any person or persons in trust for him or them, all such sum or sums of money as is now or may hereafter become due, owing or payable to me in consequence and by virtue of a judgment obtained in my name, against the said Reuben Coutts, in the United States Court for the District or Circuit of Virginia, holden in the city of Richmond aforesaid; on receipt thereof or any part thereof, to give receipts or other proper acquittances for the same, or on refusal, to sue and implead any person or persons legally charged with the payment of the said debt or judgment, and to prosecute the same to recovery, in such way as he may think proper; also one or more attorney or attornies under him to appoint, and at his pleasure to revoke, hereby giving him my full power and authority, ratifying and confirming whatever my said attorney shall lawfully do in the premises.

In witness whereof, I have hereunto set my hand and
[L. S.] seal, this fourth day of January, anno Domini, 1809.

PHILIP BUCKNER.

Teste: WILLIAM A. LEE, *N. P.*
Date above.

Copy of order.

UNITED STATES COURT,
Middle Circuit and Virginia District, May the 30*th*, 1800.

PHILIP BUCKNER, a citizen of Kentucky, plt.
against
REUBEN COUTTS, deft. } In Debt.

This day the parties by their attornies thereupon came, and a jury, to wit: Henry Shore, Thomas Nicholson, Reuben Blakely, John Murphey, Benj. Lewis, Robert Means, Obadiah Gathwright, Charles Brittain, John F. Price, Edmond Littlepage, Benjamin Bryan and Nathaniel Sheppard, (John A. Smith, sworn bailiff,) who being elected, tried and sworn, the truth to speak | upon the issue joined, upon their oath do say, that the defendant hath not paid the debt in the declaration mentioned, as the plaintiff by replying hath alledged. Therefore, it is considered by the Court, that the plaintiff recover against the defendant six hundred pounds current money of Virginia, of the value of two thousand dollars, the debt in the declaration mentioned, and his costs by him about his suit in this behalf expended; and the said defendant in mercy, &c. But this

judgment is to be discharged by the payment of eight hundred and thirty-three dollars thirty-three cents, with interest thereon, to be computed after the rate of five per centum per annum, from the nineteenth day of May, 1791, till payment, and the costs.

A copy—Teste: WILLIAM MARSHALL, *Clk.*

The following are the attestations of the notary public, and the Governor of Kentucky, affixed to the letter of attorney from Philip Buckner to William Marshall.

STATE OF KENTUCKY, *Town of Frankfort, sct.*

I, Willis A. Lee, Notary Public, in and for the Commonwealth of Kentucky, and town aforesaid, duly commissioned and qualified, according to law, dwelling in the town of Frankfort, do hereby certify, that the within letter of attorney was acknowledged before me, by the within named Philip Buckner, on the day of the date thereof, to be his act and deed, for the purposes therein contained.

In testimony whereof, I have hereunto set my hand
[L. S.] and affixed my seal notarial, the day and year within written.

Att: WILLIS A. LEE, *N. P.*

Attestation, $1 66.

STATE OF KENTUCKY:

I, Charles Scott, Governor of the Commonwealth of Kentucky, do hereby certify, that Willis A. Lee, who attests the certificate above, as notary public for the Commonwealth and town aforesaid, was at the time of attesting, and still is, the notary public for the Commonwealth of Kentucky, and town of Frankfort, duly commissioned and qualified as such, and to whose certificate full faith and credit is due.

Given under my hand, and the seal of the Common-
[L. S.] wealth, aforesaid, at Frankfort, this 13th day of January, anno Domini, 1809, and XVIII year of the C. M.

By the Governor, C. SCOTT.
J. BLEDSOE, *Sec'y,*

I, Henry Gibson, clerk of the United States Court, for the Fifth Circuit, and Eastern District of Virginia, do hereby certify, that the foregoing is a full, true and entire record of the cause of Buckner against Coutts and others, on file in my office.

In testimony whereof, I hereunto put my name, and affix the seal of the said Court, this fifth day of
[L. S.] March, in the year of our Lord, one thousand eight hundred and thirty-six.

HENRY GIBSON, *Clk.*

UNITED STATES, *Eastern District of Virginia*:

To all to whom these presents may come: I hereby certify, that Henry Gibson, whose attestation is affixed to the record hereto annexed, is clerk of the Circuit Court of the United States for the Eastern District of Virginia, duly appointed, and acting as such, and the said attestation is in due form, and full faith and credit due to the same.

In testimony whereof, I have hereunto set my hand
[L. S.] and affixed my seal, this 6th day of March, 1836.

P. P. BARBOUR,
Judge of the U. States for the Eastern District of Virginia.

Depositions.

Depo. J. H. Upshaw.

ANDREW BUCHANNON, JOHN BUCHANNON, JOHN MCWILLIAMS, JOHN CAMARER, DAVID WOOD, SAMUEL BUCHANNON, JOHN FISHER, JACOB FISHER, HENRY FISHER, DAVID FISHER, and DANIEL FISHER,
vs.
EDWIN UPSHAW.

The deposition of John Horace Upshaw, taken de bene esse before me, H. W. Latané, a justice of the peace for the county of Essex, and State of Virginia, on the 27th day of Nov., 1833, and at the house of the said H. W. Latané, in the county aforesaid, to be read as evidence in this cause, now depending in the Circuit Court of the United States for the District of Ohio.

The deponent, John Horace Upshaw, being duly sworn on the holy Evangelists of Almighty God, deposeth and saith: that in the year 1804 he was about to visit the western country, and that Edwin Upshaw, the defendant, offered him an agency in that country, one of the objects, if not the only one of which, was to receive the sum of five hundred and thirty pounds nine shillings, due under a a contract between Lyne Shackelford and Philip Buckner, of Kentucky, which said contract was assigned by said Shackelford to Edwin Upshaw, and to make said Buckner a deed for seven hundred acres of land in the State of Ohio, surveyed and patented in the name of Beverly Roy; that the said Edwin vested in this deponent full power to convey the above land to the said Buckner.

Question by Samuel W. Upshaw, agent for defendant. Did you or did you not undertake, as agent for Edwin Upshaw, to convey

to Philip Buckner, of Kentucky, seven hundred acres of land in the State of Ohio, surveyed and patented in the name of Beverly Roy, on condition that the said Buckner first paid the sum of five hundred and thirty pounds nine shillings, due under an assigned contract from Lyne Shackelford to Edwin Upshaw?

Ans. I have before stated what I consider responsive to the above question, except as to that part that asks if I did not undertake to convey, on condition that the said Buckner *first* paid the sum of five hundred and thirty pounds nine shillings. I certainly undertook to do so, and certainly did not consider myself warranted in making a title without such previous payment.

Question, by same. Did or did you not, as agent or attorney for deft., offer said Buckner a conveyance, with proper warranties, for said seven hundred acres of land, upon condition of his paying the money due under said contract?

Ans. I did. I visited said Buckner for the express purpose of making such title, and remained at his house or the town of Augusta, adjoining, several days, under the expectation of said Buckner's being able to comply with his contract, and at his earnest solicitation, with daily assurances of his hope of being able to do so; at all times ready, as he well knew, to comply with the contract on the part of Edwin Upshaw.

Question, by the same. When you appointed John O'Bannon your agent, did you or did you not require of him that all the money due on the contract between Buckner and Shackelford, which was assigned to said Edwin Upshaw, should be paid before title should be made to the land?

Ans. Certainly I did; and O'Bannon never could have considered himself authorised by me to make a title, but upon the payment of the whole of the consideration money.

Question, by same. Did or did not the defendant give you a draft or bill of exchange upon Jno. O'Bannon for the amount due under s'd contract, which was protested by O'Bannon?

Ans. He did; and I enclosed the draft to the Hon. Henry Clay for collection. Mr. Clay wrote to me, that on presentation of said draft to O'Bannon, he informed him that he had received nothing from Buckner, and had no hope of doing so, and therefore he had the bill protested and returned to me.

Question, by same. Do you believe Edwin Upshaw, the deft., expected to injure his right to the seven hundred acres of land by appointing you his agent?

Ans. I do not; it would be a strange inference. Further this deponent saith not.

VIRGINIA, *County of Essex, to wit:*

I, H. W. Latané, a justice of the peace for the county aforesaid, duly commissioned, sworn, and authorized by law, to take deposi-

tions, do hereby certify and make known, that the deposition of John Horace Upshaw, hereunto annexed, was duly taken by me at the time and place mentioned in the caption of s'd deposition; that the s'd deponent was first carefully examined, and duly cautioned, and sworn to testify the whole truth, and that the said deposition was reduced to writing by me in the presence of said deponent; and I further certify, that the said deposition is to be read as evidence in a certain cause depending in the Circuit Court of the United States, for the District of Ohio, wherein Andrew Buchannon, John Buchannon, John McWilliams, John Camerer, David Wood, Samuel Buchannon, John Fisher, Jacob Fisher, Henry Fisher, David Fisher, and Daniel Fisher, are plaintiffs, and Edwin Upshaw defendant; and that the reason of the taking of the said deposition is, that the said defendant resides more than one hundred miles from Columbus, the place of trial. And I further certify, that I am not of counsel or attorney for either of the parties, nor am I in any manner interested in the event of the cause.

In testimony whereof, I have hereunto set my hand and affixed my seal, this twenty-seventh day of November, in the year of our Lord, one thousand eight hundred and thirty-three.

H. W. LATANE. [L. S.]

Depo. W. Mann.

The deposition of William Mann, taken *de bene esse* before Reuben Garnett, a justice of the peace, in the county of King and Queen, on the 23d day of September, 1834, at the store-house of Richardson Lumpkin, at New Town, in the county aforesaid, to be read as evidence in a certain cause depending in the 7th Circuit of the United States District Court, for the District of Columbus, and in the State of Ohio; wherein Andrew Buchannon, John Buchannon, John McWilliams, John Camerer, David Wood, Samuel Buchannon, John Fisher, Jacob Fisher, Henry Fisher, David Fisher, and Daniel Fisher, are plaintiffs, and Edwin Upshaw is defendant.

The deponent, William Mann, being duly sworn on the Holy Evangelist of Almighty God, deposeth and saith: that about the year 1801 or 1802, Reuben Coutts, then a resident of the city of Richmond, in Virginia, was taken under or by virtue of an execution by Ben Sheppard, John Sheppard and this depon't, acting at that time as deputy sheriffs for the county of *Hennrracco*, which exon. was a ca. sa, and was for a large amount; that he made his escape from the s'd Dy. Sheriff; and from all this depon't heard afterwards, that the money never was made upon the said execution. This depon't was well acquainted with s'd Coutts from the time above stated, until his death; that subsequent to his death a suit in chancery was brought in the Circuit Court of the United States, for the District of Virginia, in the name of Philip Buckner, against

s'd Coutts' heirs and trustee, which suit he is induced to believe has been abandoned by the plaintiff, for some cause or other; that he understood that William Marshall, who was at that time clerk of said court, became security for costs, and he believes that not a cent of it has ever been paid. His knowledge of these matters grew out of his acting as deputy marshal at the time, and serving the process in the chancery court, from 1803 to 1820, about seventeen years, and particularly the case of Buckner against Coutts, he well recollects; and that nothing was made through the marshal, nor was there any property out of which any ex'on could be made.

Ques. by Edwin Upshaw, the deft. Did not Reuben Coutts live and die in the prison bounds?

Answer. I am induced to think he did, as I know he was in the bounds, and do not recollect of ever hearing of his being liberated.

WM. MANN.

VIRGINIA, COUNTY OF KING AND QUEEN, *to wit:*

I, Reuben M. Garnett, a justice of the peace for the county aforesaid, duly commissioned and sworn, and authorized by law to take depositions, do hereby certify and make known, that the deposition of William Mann, hereto annexed, was duly taken by me at the time and place mentioned in the caption of the deposition; that the said depon't was first carefully examined, cautioned and sworn to testify the whole truth, and that the said deposition was reduced to writing by me, in the presence of the s'd depon't; and I further certify, that the said deposition is to be read as evidence in a certain cause depending in the 7th Circuit of the United States district Court for the district of Columbus, State of Ohio, wherein Andrew Buchannon, John Buchannon, John McWilliams, John Camarer, David Wood, Samuel Buchannon, John Fisher, Jacob Fisher, Henry Fisher, David Fisher, and Daniel Fisher, are plaintiffs, and Edwin Upshaw defend't, and the reason of the taking the deposition is, that the deponent resides at a greater distance than one hundred miles from the place of trial. And I further certify, that I am not of counsel or attorney for either of the parties, or am I in any manner interested in the event of the cause.

In testimony whereof, I have hereunto *set* my hand and affixed my seal, this 23d day of September, in the year of our Lord eighteen hundred and thirty-four.

REUBEN M. GARNETT, [L. S.]

Depo. J. H. Upshaw.

The deposition of John H. Upshaw, taken de bene esse before me, H. W. Latané, a justice of the peace for the county of Essex and State of Virginia, duly authorised by law to take depositions, on the 26th day of Sept., 1834, at the house of said Latané, in

the county aforesaid, to be read as evidence in a certain cause depending in the Circuit Court of the United States for the seventh circuit and district of Ohio, wherein Andrew Buchannon, John Buchannon, John McWilliams, John Camarer, David Wood, Samuel Buchannon, John Fisher, Jacob Fisher, Henry Fisher, David Fisher, and Daniel Fisher, are plaintiffs, and Edwin Upshaw defendant.

The deponent, John H. Upshaw, being duly sworn on the Holy Evangelists of Almighty God, deposeth and saith:

That in the spring of 1804 he was about to visit Kentucky and Ohio, and that he was authorised by the defendant, Edwin Upshaw, then of the county of Essex, in the State of Virginia, to receive of Philip Buckner, of the county of Bracken, and State of Kentucky, the sum of five hundred and thirty pounds nine shillings, due on a contract between Lyne Shackelford, of the county of King and Queen, in the State of Virginia, and Philip Buckner, of the county of Bracken, in the State of Kentucky, the benefit of which contract had been assigned by said Shackelford to the aforenamed Edwin Upshaw; and upon the payment of the said sum of £530 9 by said Buckner, he was empowered to make a deed or other satisfactory assurance to s'd Buckner for seven hundred acres of military land, in the district set apart for the officers and soldiers of the Virginia line of the late continental army, on the north-west side of the Ohio river, being part of a thousand acres, No. 1064, surveyed for Beverly Roy; that this deponent did call on s'd Buckner and demand of him the said sum of money, as due on the said contract, exhibiting to him his ample power to receive the same, and to execute on the receipt thereof a deed, with ample assurances for the seven hundred acres of land designated in the aforesaid contract between Lyne Shackelford and Philip Buckner, and which had been assigned as above, to Edwin Upshaw.

Question. Samuel W. Upshaw as agent for Edwin Upshaw. When you called on s'd Buckner as stated above, why did he not comply with the contract?

Answer. He professed great anxiety to do so, and induced me to remain at his house and in the neighborhood several days, by saying that he would try to make arrangements by which he might raise the money, but finally admitted that he could not do it in any reasonable time; and I was perfectly convinced from what he said and from what others informed me, that to remain there was worse than useless.

Question, by same. Please state your reasons for, and the circumstances under which you appointed John O'Bannon your attorney?

Ans. Philip Buckner, I think, referred me to the Hon. John Brown of Frankfort, and Maj. Jno. O'Bannon of Woodford, relative to the value of a tract of land in Shelby, and the title to the same,

which he proposed selling, to raise the money to enable him to comply with his contract, as above. I collected in conversation from O'Bannon, that he thought the money might be raised out of the Shelby land, and that he could (he believed,) collect the money in some short time. This assurance induced me to execute to O'Bannon a power of attorney to enable him to receive from Buckner the aforementioned sum, and to execute a title upon the payment thereof, as I was then, after a long absence from Virginia, about to return.

Question, by same. Were you authorised, or did you consider that you authorised said O'Bannon to make a title to said tract of land, until all the money due under the above mentioned contract had been paid?

Ans. I certainly did not consider myself authorised to tender Buckner a title until the money was paid, and I certainly did not give to O'Bannon a power greater than the one possessed by myself: and further this deponent saith not.

JNO. HORACE UPSHAW.

VIRGINIA, ESSEX COUNTY, *to wit:*

I, H. W. Latané, a justice of the peace for the county aforesaid, duly commissioned and sworn, and authorised by law to take depositions, do hereby certify and make known, that the deposition of Jno. H. Upshaw hereto annexed, was duly taken by me at the time and place mentioned in the caption thereof; that the said deponent was first carefully examined, and duly cautioned and sworn to testify the whole truth, and that the said deposition was reduced to writing by me in the presence of the deponent. And I further certify, that the reason of the taking of the said deposition is, that the said deponent resides at a greater distance than one hundred miles from the place of trial. I further certify, that I am not of counsel or attorney for either of the parties, nor am I in any manner interested in the event of the cause.

In testimony whereof, I have hereunto set my hand and affixed my seal, this 26th day of September, 1834.

H. W. LATANE. [L. S.]

Depo. J. H. Upshaw.

The deposition of John H. Upshaw, taken before me, Warner Lewis, the undersigned, one of the justices of the peace in and for the county of Essex, in the commonwealth of Virginia, being by virtue of my commission one of the judges of the county court, in and for the county aforesaid, duly commissioned, sworn and acting as such on this 25th day of Sept., in the year 1835, at my own house, in the county aforesaid, to be read as evidence in a certain suit depending in the court of the United States, in and for the 7th circuit and Ohio district, holden in Columbus,

wherein Andrew Buchannon, John Buchannon, John McWilliams, John Camarer, David Wood, Samuel Buchannon, John Fisher, Jacob Fisher, Henry Fisher, David Fisher, and Daniel Fisher, are plaintiffs, and Edwin Upshaw is defendant.

The said deponent, being first duly sworn and cautioned to depose the whole truth, doth depose and say, that he resides in the said county of Essex, and more than one hundred miles from Columbus, and is more than twenty-one years of age; furthermore he saith, that in the spring of 1804, when he was about to visit the western country, he was employed by Edwin Upshaw to attend to some interests of his there; to enable him to do so, the s'd Upshaw executed to him a power of attorney, in which he was particularly authorised to receive from Philip Buckner, the sum of five hundred and thirty pounds, it being the amount due from Buckner, on a contract between Lyne Shackelford and said Buckner, the benefit of which contract had been assigned to Edwin Upshaw, and to tender or make (which of the two not recollected,) to said Buckner a deed for seven hundred acres of military land, lying in the territory north-west of the Ohio river, being part of one thousand acres of land surveyed for Beverly Roy, as appears by the above named contract; that this respondent did, as impowered, go to Buckner's and make every effort to collect from him the above sum of £530, due upon the afore described contract, and either tendered him a deed already executed, or offered to make him an unexceptionable deed with proper assurances; that the said Buckner, before this deponent left him, professed himself utterly unable to comply with his contract.

This deponent further sayeth, that when he first visited Buckner, he pretended that he would be able to comply with his contract, and by that means he induced him to remain some time in his neighborhood; but when finally importuned and pressed by this deponent, he admitted fully his incompetency.

1st question by defendant's attorney. Did you, or not, make a power attorney to Major John O'Bannon, authorising him to make a deed to Buckner, upon Buckner's paying him the amount due on the contract?

Answer. I did.

2d question. What were your inducements?

Answer. When I met with Major O'Bannon and informed him that Buckner had failed to comply with his contract, and that I was about to leave the State, he said, he believed he could make the money or collect it. I think he said that Buckner had some land that he would sell, out of which he would be able to pay the money. I thought it was as well to make the experiment.

3d question. Did you, or not, consider yourself as authorised, or that you authorised Major O'Bannon, to receive of Buckner any sum less than the whole amount due, before title made?

Answer. I should not have considered, that under the original contract, I had any right to make, or tender the deed, but upon the payment of the whole money; and if *I had not*, I *certainly* had *no right* to delegate a greater *power*, if I had a right to make a power at all.

JOHN HORACE UPSHAW.

I, Warner Lewis, one of the justices of the peace in and for the county of Essex, in the commonwealth of Virginia, duly commissioned, sworn and acting as such, and by virtue of said commission being one of the Judges of the County Court, in and for said county, do certify, that at the request of the defendant in said suit, I caused the deponent, in the foregoing deposition, to come before me, at the time and place stated in the caption; because the said witness resides more than one hundred miles from Columbus, the place of holding the said court of the United States; that I did not cause any notification to be given to the adverse party of the time and place, so as to be present at taking the same; because the said adverse party did not live within one hundred miles of the place of taking the same, and had no agent, or attorney, known within that distance of the said place of caption. The said witness was by me carefully examined, cautioned and sworn, then and there, to testify the whole truth. This deposition was wholly reduced to writing by me, in presence of said witness, then and there, and subscribed by him in my presence. That I am not of counsel or attorney to either of the parties, or interested in the event of the cause. All which, I do certify to said court, as the cause and manner wherefore said deposition was taken.

WARNER LEWIS,
Justice of the Peace for Essex County.

Deposition, Charles Copland.

The deposition of Charles Copland, taken before me, James Rawlings, the undersigned, a justice of the peace in the corporation of the city of Richmond, in the commonwealth of Virginia, and one of the judges of the Court of Hustings of the said corporation, and acting as such on this 27th day of February, in the year 1836, at the corporation aforesaid, to be read in evidence in a certain suit depending in the court of the United States, in and for the seventh circuit and district of Ohio, holden in Columbus, in Ohio, wherein William Buchannon and others are plaintiffs, and Edwin Upshaw is defendant. The said deponent being first duly sworn and charged to depose the whole truth, doth depose and say: that he resides in the said corporation of Richmond, in Virginia, and more than one hundred miles from Columbus, in Ohio. Furthermore, he sayeth, that he has no recollection of ever having been authorised or requested by the late Philip Buckner, of Ken-

tucky, to receive for him any money from the late Reuben Coutts, of Virginia; and this deponent says, positively, that he never did receive any money, or other thing, from the said Reuben Coutts, for the said Philip Buckner; and the said deponent further sayeth, that he never was employed by the said Philip Buckner to bring a suit against the said Reuben Coutts; nor was ever any bond or other obligation of the said Reuben Coutts delivered by the said Philip Buckner to this deponent, to be put in suit, or for any other purpose, that he, this deponent, has any recollection of. The defendant in this suit has shewn this deponent a paper writing, dated on the 16th day of Nov., 1797, with the name "Philip Buckner" subscribed to it, purporting to be an order on this deponent, to pay to Lyne Shackelford the amount of Reuben Coutts' bond, when the money due upon the said bond should be recovered. And below, on the same paper, was another writing with the name "Lyne Shackelford" subscribed to it, purporting to be an order on this deponent from said Shackelford, to pay the same to Maj. William Chamberlayne, and dated August, 1800.

This deponent sayeth, that the paper here spoken of, was never seen by him till the 21 May, 1825, when it was then, for the first time, shewn to him by the defendant, Upshaw. Nor was he, this deponent, ever informed by Lyne Shackelford, in his lifetime, or by Maj. William Chamberlayne, now alive, that they had such a paper, or that the same existed.

The deponent further sayeth, that there has been shewn to him by the defendant in this suit, a receipt of John Marshall (late Chief Justice of the United States, now deceased) to Philip Buckner, for a bond of Reuben Coutts, to bring suit on, and a copy of a judgment of the United States court, holden in Richmond, "Philip Buckner against Reuben Coutts." And further this deponent saith not.

CHAS. COPLAND.

I, James Rawlings, one of the justices of the peace, in and for the corporation of the said city of Richmond, in the commonwealth of Virginia, duly appointed, sworn and acting as such, and by virtue of my office aforesaid, being one of the judges of the Husting's Court, in and for the said city of Richmond, do certify, that at the request of Edwin Upshaw, the defendant in said suit, I caused the deponent in the foregoing deposition to come before me, at the time and place stated in the caption; because the said witness resides more than one hundred miles from Columbus, in the State of Ohio, the place of holding the said court of the United States. That I did not cause any notification to be given to the adverse partys of the time and place, so as to be present at the taking of the same, because the said adverse parties do not reside within one hundred miles of the place of the taking of the same, and had no agent or attorney known within that distance of the said place of

caption. The said witness was by me carefully examined, cautioned and sworn, then and there to testify the whole truth. The said deposition was reduced to writing by me, and subscribed by the deponent in my presence. That I am not of counsel or attorney to either of the parties, or interested in the event of the suit or cause. All of which I certify to the said court, as the cause and manner wherefore the said deposition was taken.

Given under my hand, on this 27th day of Feb'y, 1836.

JAMES RAWLINGS, *a Justice of the Peace in and for the city of Richmond, in Virginia.*

Deposition, James E. Heath.

The deposition of James E. Heath, auditor of public accounts for the State of Virginia, taken before me, the undersigned, John G. Mosley, one of the justices of the peace for the county of Henrico, in the commonwealth of Virginia, being, by virtue of my commission, one of the justices of the County Court in and for the county aforesaid, duly commissioned, sworn and acting as such, on this 27th day of February, in the year one thousand eight hundred and thirty-six, at the auditor's office in the city of Richmond, in the county aforesaid, to be read in evidence in a certain suit depending in the court of the United States, in and for the seventh circuit, and Ohio district, holden in Columbus, wherein William Buchannon, John Buchannon, Alexander Buchannon and others are plaintiffs, and Edwin Upshaw is defendant, in chancery. The said defendant, being first duly sworn and cautioned to depose the whole truth, doth depose and say: That he resides in the city of Richmond, in the said county of Henrico, and more than one hundred miles from Columbus, in the State of Ohio, and is upwards of forty years of age. Furthermore, he saith, that Lyne Shackleford was, in the year 1805, a member of the privy counsel of the State of Virginia, and that in that character he drew an order, on the 3d of April, 1805, in favor of Wm. Dandridge, for his quarter's salary; which order is now on the file of the auditor's office, and is in the words and figures following, to wit:

"SAMUEL SHEPARD, Esq., Auditor of Public Accounts:

Please to deliver to Wm. Dandridge, Esq., a warrant for my quarter's salary, as a member of the Counsel of State, ending the 31st March, inclusive.

I am, Sir,

Your obedient servant,

LYNE SHACKELFORD.

3d April, 1805."

That this deponent has been shewn, by the defendant, Edwin Upshaw, a paper, which is hereto annexed, and which is in the following words and figures, to wit:

"*Kentucky, Bracken, 16th Nov.*, 1797.

Sir,—Be pleased to pay to Mr. Lyne Shackelford, the amount of Reuben Coutt's bond, due to me, and which I have requested you to bring suit upon, in the Federal Court, held in Richmond, whenever the money due upon said bond shall be recovered.

I am, sir,
Your ob. serv't,

PHILIP BUCKNER.

CHARLES COPLAND, Esq., Attorney at Law, Richmond, Virginia:

Pay the above to Major William Chamberlayne.

LYNE SHACKELFORD.

CHARLES COPLAND, Esq."
13th Aug., 1800.

This deponent has compared, with great care, the signature of *Lyne Shackelford*, in the original paper, hereto annexed, of which the foregoing is a true copy, with the signature of the same person, in the order filed in the auditor's office, a copy of which is contained in this deposition, and he is perfectly satisfied, as far as it is possible to judge from similitude of hand-writing, that they were written by one and the same person; and further this deponent saith not.

JAS. E. HEATH.

I, John G. Mosly, one of the justices of the peace in and for the County of Henrico, in the Commonwealth of Virginia, duly commissioned and sworn, and acting as such, and by virtue of said commission, being one of the justices of the County Court, in and for the said county, do certify, that at the request of the defendant in said suit, I caused the deponent in the foregoing deposition to come before me, at the time and place stated in the caption, because the said witness resides more than one hundred miles from Columbus, the place of holding the said Court of the United States; that I did not cause any notification to be given to the adverse parties, of the time and place, so as to be present at the taking of the same, because the said adverse parties did not, to the best of my knowledge and belief, reside within one hundred miles of the place of taking the same, and had no agent or attorney known to me, within that distance of the said place of caption. The said witness was by me carefully examined, cautioned and sworn, then and there to testify the whole truth; the said deposition was reduced to writing by the witness, and acknowledged by him in my presence; that I am not of counsel or attorney to either of the parties, or interested in the event of the cause; all of which I do certify to the said court, as the cause and manner wherefore said deposition was taken.

JNO. G. MOSLY, *J. P.*

5572.

Kentucky, Bracken, 16th Nov., 1797.

Sir,—Be pleased to pay to Mr. Lyne Shackelford the amount of Reuben Coutts' bond, due to me, and which I have requested you to bring suit upon, in the Federal Court, held in Richmond, whenever the money due upon said bond shall be recovered.

I am, sir, your ob. serv't,

PHILIP BUCKNER.

CHARLES COPLAND, Esq., Attorney at Law, Richmond, Virginia:

Pay the above to Major William Chamberlayne.

LYNE SHACKELFORD.

CHARLES COPLAND, Esq.
13th Aug., 1800.

And thereupon "this cause is submitted to the court, and taken under advisement, to be agreed in writing, in vacation," as per the following agreement of counsel, to wit:

Agreement.

BUCHANNON, and others, *vs.* EDWIN UPSHAW. } In Chancery.

This cause is submitted and to be taken under advisement by Judge McLean, to be argued in writing.

Judge Swan to open the argument for complainants within 30 days, and forward the argument and the papers to Judge Scott.

Judge Scott shall submit his argument within 30 days after he receives the papers, and send that, with the papers and Mr. Ewing's argument, to J. C. Wright, Cincinnati.

J. C. Wright shall submit his argument in 30 days after the receipt of the papers, and forward the whole to Judge McLean.

J. C. Wright, for complainant; Thomas Scott, for def't.

And afterwards, to wit, at the December term of said court, anno Domini one thousand eight hundred and thirty-nine, came the parties, by their counsel, and thereupon the following interlocutory decree was entered, to wit:

In Chancery—Decree Interlocutory.

JOHN BUCHANNON, ANDREW BUCHANNON, John McWilliams, John Camarer, David Wood, Samuel Buchannon, John Fisher, David Fisher, Henry Fisher and Daniel Fisher, citizens and residents in the State and District of Ohio, complainants,

vs.

EDWIN UPSHAW, et als., citizens of, and residents of the State of Virginia, def'ts.

This cause having been set for hearing on bill, answer, replica-

tion, exhibits and depositions, was argued by counsel; and the court having fully advised of and concerning the premises, are of opinion that the law and equity of the case are with the defendants. But it being made appear to the court here, that the complainants have each made lasting and valuable improvements on that part of the lands in the bill named, which is possessed by him, that each has regularly paid the taxes on the said lands, and received to his own use the rents, issues and profits thereof; in order, therefore, that right and justice may be done in the premises, it is hereby adjudged, ordered and decreed, that said bill and injunction be retained until the further order of this court; and that John L. Miner, one of the master commissioners of this court, carefully examine and report to us, at our next term, a just and true estimate of the cash value of all lasting and valuable improvements made by the complainants respectively, on that portion of the seven hundred acres of land in the bill named, in his possession; a true valuation of the value of each tract in a state of nature; a just and true statement of taxes paid on said lands by the complainants, respectively, and a just and true statement, in cash, of the annual nett rents, issues and profits of said lands, in possession of the complainants, respectively, during each successive year he, or those under whom he claims, has had the occupancy or possession thereof, with interest on such statement up to the next term of this court; and the right asserted by the complainants to the two hundred dollars charged to have been paid by Buckner to O'Bannon, is reserved for consideration and adjudication, until the coming in of said report. The master is authorised take the papers, and to call witnesses before him, as to the subject matter of his report, and to return to the court the depositions taken by him; and this cause is continued.

Tuesday, December 24th.

And afterwards, to wit, at the July term of said court, anno Domini one thousand eight hundred and forty, came the parties, by their counsel; and thereupon John L. Miner, Esq., the master commissioner to whom this cause was referred, made the following report to the court here, to wit:

In Chancery—Decree Interlocutory.

JOHN BUCHANNON, ANDREW BUCHANNON, John McWilliams, John Camerer, David Wood, Samuel Buchannon, John Fisher, David Fisher, Henry Fisher and Daniel Fisher, citizens of, and residents in the State and District of Ohio, complainants,

vs.

EDWIN UPSHAW, et als., citizens of, and residents of the State of Virginia, def'ts.

This cause having been set for hearing on bill, answer, replica-

tion, exhibits and depositions, was argued by counsel, and the court having fully advised of and concerning the premises, are of opinion that the law and equity of the case are with the defendants. But it being made appear to the court here that the complainants have each made lasting and valuable improvements on that part of the lands in the bill named, which is possessed by him, that each has regularly paid the taxes on said lands, and received to his own use the rents, issues, and profits thereof; in order, therefore, that right and justice may be done in the premises, it is hereby adjudged, ordered, and decreed, that said bill and injunction be retained until the further order of this court, and that John L. Miner, one of the master commissioners of this court, carefully examine and report to us, at our next term, a just and true estimate of the cash value of all lasting and valuable improvements made by the complainants respectively on that portion of the 700 acres of land in the bill named, in his possession; a true valuation of the value of each tract in a state of nature; a just and true statement of taxes paid on said lands by the complainants respectively; and a just and true statement in cash of the annual nett rents, issues, and profits of said lands, in possession of the complainants respectively, during each successive year he, or those under whom he claims, has had the occupancy or possession thereof, with interest on such statement, up to the next term of this court; and the right asserted by the complainants to the two hundred dollars charged to have been paid by Buckner to O'Bannon, is reserved for consideration and adjudication until the coming in of said report. The master is authorized to take the papers, and to call witnesses before him as to the subject matter of his report, and to return to the court the depositions taken by him: and this cause is continued.

A true copy from the journal.

Att: WM. MINER, *Clerk.*

In compliance with the foregoing order, I proceeded, on the 16th of June, 1840, on the premises in question, to take the testimony of witnesses hereto attached, in reference to the several matters and things required by the said order. I have made the testimony thus taken the basis of the calculations upon the large tables hereto attached. A balance sheet is also attached, which will show the account current, excluding the value of the several parcels of land in a state of nature. I found it impossible to ascertain with accuracy the amount of land cleared on each of the several parcels each year, from the year 1800 to the present time. In assigning the quantity for each year, however, I have been governed by the testimony. I obtained from under the hand of the auditor of Clermont Co., a list of the taxes paid by each of the plaintiffs on the several parcels, for and from the year 1820 to the present time, which is hereto attached. The plaintiffs, unable to furnish me with but few receipts for taxes paid prior to the year 1820; neither

have I been able to procure from the county books or the duplicates in the State Auditor's office, the taxes for those prior years. Knowing the quantity upon which taxes were paid, and being informed that each parcel always rated *second rate*, I have referred to the several statutes upon the subject of taxation from the year 1799 to 1821, and thus made up the amount upon each parcel for each year. I procured the improved land of each parcel to be surveyed by the county surveyor, and the quantity of each is hereto attached. It will be perceived, that two of the witnesses called to testify did not subscribe their names to their testimony. This was an inadvertence, and any objections on this account was agreed to be waived on the part of the defendants by their counsel, Judge T. Scott, who was present at the taking of all the testimony. The large tables will show the cleared land of each parcel, for and from the year 1800, when it is supposed the first crop was produced, up to the year 1840: the yearly value per acre for each year, of the nett rents, issues and profits: the gross annual value of the same for each year: the gross interest on the same from the year when they accrued, up to the 6th July, 1840: the gross tax for each year, and the interest on the taxes from the time paid to the 6th of July, 1840: the value of the improvements, including clearing the land, fences upon it, and other fixtures: and the present value of the land in a state of nature: all which is respectfully submitted.

J. L. MINER,
Master Commissioner of the C. C. U. S. Dist. of Ohio.

The surveyors and chain carriers' fees are twenty dollars; one half paid by plff 's and the other half by def 't.

EDWIN UPSHAW.

$20 00.

Six witnesses, three of them 4 days' attendance each; two of them 3 days each, and one 2 days: 20 days in all, at $1 25.
$25 00.

Commissioners' fees, $150 00.

It may be proper to add, that I have made no calculation of the rent for the present year. The parties are in possession of the land, and cultivating it.

J. L. MINER,
M. C.

JOHN BUCHANNON, *Dr.*

Nett rents on land, from 1st Jan'y 1800, to 1st Jan'y, 1840, - - - - -	$2,077 59 1
Interest on same, from 1st Jan'y, 1800, to 6th July, 1840, - - - - -	1,436 36 1
	$3,513 95 2
	$586 29 5
Cr.	
By improvements on same land, - -	$2,686 25 0
By taxes from 1800 to 1840, - - -	137 37 7
By interest on taxes from 1st Jan'y, 1800, to 6th July, 1840, - - - - -	104 03 0
	$2,927 65 7

ANDREW BUCHANNON, *Dr.*

To nett rents on land, from 1st Jan'y, 1800, to 1st Jan'y, 1840, - - - -	$1,995 18 0
To interest on the same, from 1st Jan'y, 1800, to 6th July, 1840, - - - -	1,721 30 4
	$3,716 48 4
	$1,825 50 1
Cr.	
By improvement on same land, - -	$1,737 50 0
By taxes from 1800 to 1840, - - -	86 67 8
By interest on taxes, from 1st Jan'y, 1800, to 1st July, 1840, - - - -	66 80 5
	$1,890 98 3

JOHN MCWILLIAMS, *Dr.*

To nett rents on land, from 1st Jan'y, 1800, to 1st Jan'y, 1840,	$1,870 94 8
To interest on rents, from 1st Jan'y, 1800, to 6th July, 1840,	1,399 99 9
	$3,270 94 7
	$663 52 1
Cr.	
By improvements on same land,	$2,391 25 1
By taxes from 1st Jan'y, 1800, to 1st Jan'y, 1840,	129 52 0
By interest on taxes, from 1st Jan'y, 1800, to 6th July, 1840,	86 65 5
	$2,607 42 6

JOHN CAMERER, *Dr.*

To nett rents, from 1st Jan'y, 1800, to 1st Jan'y, 1840,	$3,219 07 8
Interest on rents, from 1st Jan'y, 1800, to 6th July, 1840,	2,475 45 5
	$5,694 53 3
	$2,818 34 3
Cr.	
By improvements on land,	$2,670 00 0
By taxes, 1800 to 1840,	109 11 0
Interest on taxes, from 1st Jan'y, 1800, to 6th July, 1840,	97 07 0
	$2,886 18 0

DAVID WOOD, *Dr.*

To nett rents, from 1st Jan'y, 1800, to 1st Jan'y, 1840,	$681 94 4
Interest on rents, from 1st Jan'y, 1800, to 6th July, 1840,	373 19 1
	$1,055 13 5
	$605 26 4
Cr.	
By improvements on land,	$376 12 8
By taxes, from 1800 to 1840,	39 23 0
By interest on taxes, from 1st Jan'y, 1800, to 6th July, 1840,	34 51 3
	$449 87 1

SAMUEL BUCHANNON, *Dr.*

To nett rents from 1st Jan., 1800, to 1st Jan., 1840	$1,982 17 6
Interest on rents from 1st January, 1800, to 6th July, 1840	1,590 20 1
	$3,572 37 7
	$1,740 56 8
Cr.	
By improvements on land	$1,689 16 0
By taxes from 1800 to 1840	77 36 7
By interest on taxes from 1st January, 1800, to 6th July, 1840	65 28 2
	$1,831 80 9

JOHN FISHER, ET ALS., *Dr.*

To nett rents from 1st Jan., 1800, to 1st January, 1840 - - -	$2,680 96 0
Interest on rents from 1st January, 1800, to 6th July, 1840 - - - - -	1,590 20 1
	$4,271 16 1
	$1,776 72 3

Cr.

By improvements on land - - -	$2,313 51 6
By taxes from 1800 to 1840 - - -	91 83 3
By interest on taxes from 1st January, 1800, to 6th July, 1840 - - - -	89 08 9
	$2,494 43 8

Christopher Annacost, of lawful age, being first duly sworn, deposes and says, that the improvements of John Buchannon on that part of the 700 acres in his possession, including the clearing and fencing of the land, the house, barn, &c., and orchard, are, in his opinion, worth $3,000. That the land in the possession of said John Buchannon is now worth, in a state of nature, $8 per acre; from the year 1806, when I moved into this neighborhood, until about the year 1836, it was the common practice, in this section of the country, to receive ten bushels of corn to the acre as rent. Witness has no recollection of the cash value of corn in any of the years above included; no recollection of the periods at which the various portions of the said Buchannon's improvements were made. That the improvements of Andrew Buchannon on that part of the said 700 acres in his possession, including clearing and fencing the land, house, barn, &c., are worth $2,500. That the land in the possession of the said Andrew Buchannon would be now worth, in a state of nature, $8 per acre. That the improvements of John McWilliams on that part of the 700 acres in his possession, including as above, are now worth $2,700; that his land, in a state of nature, is now worth $6 per acre. That the improvements of John Camerer on that part of the 700 acres in his possession, including as above, are now worth $2,500; and his land, in a state of nature, is now worth $6 50 per acre. That the improvement of David Wood on that part of the 700 acres in his possession, are now worth $300; and his land, in a state of nature,

is worth $8 per acre. That the improvements of Samuel Buchannon on that part of the said 700 acres in his possession, are now worth $2,500; and his land, in a state of nature, is now worth $6 per acre. That John, David, Henry and Daniel Fisher's improvement on that part of the 700 acres in their possession, are now worth $2,500; and their land, in a state of nature, is now worth $6 per acre. Witness is father-in-law to Daniel Fisher, who has sold his interest in said land. Witness has not, previous to his examination, communicated with any one in reference to the estimates given by him. The witness is of opinion that one dollar per acre per annum, throughout the whole period these lands have been cultivated, is a fair value, in cash, of the yearly rents, issues and profits, deducting from this amount one-fifth, every five years, for keeping the premises in repairs, &c.

At the same time and place came also James Bennett, who, first being duly sworn, deposes and says: that the clearing and fencing of that part of the improved land included in the said 700 acre tract, now in the possession of John Buchannon, is worth, in cash, $15 per acre; that his house and kitchen are worth, in cash, now, $800; his barn $150; his orchard $200; one well $30; machine-house $40; that the land in his possession, in a state of nature, would now be worth $12 per acre. That John Buchannon settled on the premises he now occupies some time in the year 1804; at which time, witness thinks, there was a small improvement—about one or two acres; the time at which said improvement was made, witness does not recollect. Witness is of opinion that during the first two years that John Buchannon lived on the premises, he cleared from 15 to 20 acres; but what quantity was cleared each year, witness cannot state. That from 1815 to 1825, he added to his improvement 20 acres more; but how much each year, cannot state. That in the next five years he added to his improvement 12 acres more; about this time, (1830,) or shortly after, there was from 12 to 15 acres more cleared; in 1837 there were 6 or 7 acres cleared, and in the spring of the present year, 1840, 8 acres cleared. Witness cannot more nearly identify the times at which the foregoing improvements were made. Witness is of opinion that from the year 1800 to 1810, the cash value of the rents of the land in possession of said John Buchannon were worth $1 per acre; for the next 10 years, (from 1810 to 1820,) $1 25 per acre; from 1820 to 1830, $1 50 per acre; from 1830 to 1840, $2,00 per acre per annum. Witness does not recollect the precise time at which the improvement commenced, but thinks about the year 1800. That the clearing and fencing of that part of the cleared land of said 700 now in the possession of Andrew Buchannon, are worth, in cash, $15 per acre; one house and kitchen $450; one stable $150; one orchard $175; that his land, in a state of nature, is worth now $12 per acre. My impression is that the improvements on the said Andrew's land were commenced in the year 1798; that between the years

1798 and 1800 there were cleared about 10 acres; from 1800 to 1810, 20 acres more; from 1810 to 1833, I have no distinct recollection of the quantity improved, or the particular time; about the year 1833 there were 10 acres cleared, and in the spring of 1839 there were 4 acres cleared—worth, in a state of nature, $12 per acre. I consider the cash value of the rents, issues and profits, the same on this tract as on that of John Buchannon, before given. That the clearing and fencing of that part of the improved land of the said 700 acres now in the possession John McWilliams, is worth, in cash, $15 per acre; one brick house, worth now $800; one stable, $150; one barn and spring-house, $75; orchard, $175. This land, in a state of nature, is now worth $11 per acre; my impression is, this improvement commenced about the year 1800. Between 1800 and 1810, there were cleared about 15 acres; between 1810 and 1820, about 20 acres more; between 1820 and 1830, about 15 acres more. In the years 1838 and '9, there were 10 acres more cleared; at what time the balance was cleared, the witness cannot state; there may have been more cleared between the years 1810 and 1820 than I have stated. The cash value of the yearly rents, issues and profits, the same (for the same periods) per acre as John Buchannon's. That the clearing and fencing of that part of the improved land of the said 700 acres, now in the possession of John Camerer, is worth, in cash, $15 per acre; one brick house and kitchen now worth $600; one barn $100; one orchard 200; a well $35. That Camerer's land, in a state of nature, is now worth $10 per acre. Witness is of opinion that the improvements were commenced about the year 1800. Between the years 1800 and 1810, about 20 acres cleared; from 1810 to 1820, 20 acres more; from 1820 to 1830, about 22 acres; in 1837 he cleared 9 acres; at what time the balance was cleared, witness cannot say. The cash value of the yearly nett rents, issues and profits, the same (for the same periods) per acre as John Buchannon's. That the clearing and fencing of that part of the improved land of the said 700 acres, now in the possession of David Wood, is worth $15 per acre; no buildings or fixtures of value on the land in his possession. There are 25½ acres cleared in his possession; one-half of which was cleared about the year 1820, and the other half about the year 1825. The cash value of the yearly rents, issues and profits, the same (for the same periods) as John Buchannon's. This land, in my opinion, is now worth, in a state of nature, $11 per acre. That the clearing and fencing of that part of the improved land of the said 700 acres, now in the possession of Samuel Buchannon, is worth $15 per acre; one dwelling-house, worth now $50; one barn, worth $400; one orchard $150; one well $20; the land is now worth, in a state of nature, $11 per acre. Improvements commenced about the year 1800. Between 1800 and 1810 there were about 20 acres cleared; between 1810 and 1820 about 15 more. I was more conversant with this piece of land at an early day than

recently, and cannot state when the balance of the improvements were made. The cash value of the yearly rents, issues and profits, should be the same (for the same periods) as are John Buchannon's. That the clearing and fencing of that part of the improved land of the 700 acres lately in the possession of John, David, Henry and Daniel Fisher, is worth $15 per acre; one frame house upon it, now worth $600; one barn $150; small dwelling, stable, and young orchard, $75; one bearing orchard $175. This land, in a state of nature, I consider now worth $9 per acre. Improvements begun about the year 1800. Between the years 1800 and 1810, about 25 acres cleared; from 1810 to 1820, about 15 acres more; not informed as to the time when the balance was cleared. The rent of this land for the first 10 years, was worth, in my opinion, in cash, one dollar per acre; and from that time to the present, $1 25-100 per acre. It is my opinion that $50 should be deducted from the price of the above improvements, on account of lack of timber; and further, says not.

JAMES BENNETT.

At the same time and place came also Dowty Utter, who being first duly sworn, deposes and says, that the clearing and fencing on that part of the improved land, of the said 700 acre tract, now in the possession of John Buchannon, is worth $20 per acre; house and kitchen upon it, $1000; barn, $250; smoke-house and well, $100; orchard, $500; school-house, $175; machine-house, $75. I consider the land in a state of nature $10 per acre. Improvements on this parcel commenced about the year 1800. I do not know that there was any improvement prior to 1800; between the years 1800 and 1820, my impression is, about half the present quantity was cleared; witness cannot state with any precision, at what time the subsequent improvements have been made; is of the impression, that more has been cleared between the years 1830 and 1840, than between the years 1820 and 1830. From the years 1800 to 1810, one dollar per acre per annum would be in my opinion a fair value of the nett rents, issues and profits of this land; from 1810 to 1820, one dollar and twenty-five cents per acre; from 1820 to 1830, one dollar and twenty-five cents per acre; from 1830 to 1835, $1 50 cents per acre; from 1835 to 1840, two dollars per acre. That the clearing and fencing on that part of the improved land of the 700 acres, now in the possession of Andrew Buchannon, is worth $20 per acre; one house and kitchen upon it, $300; barn and smoke-house, $200; orchard, $300; land in a natural state, now worth $10 per acre. Improvements commenced about the year 1799. It is my impression, that about half of the present improvement was made prior to the year 1820; think the improvement previous to the year 1820 was gradually made, from year to year; such was the custom of the country; there have been two fields cleared since the year 1830, and

more cleared since then than between the years 1820 and 1830; witness cannot answer mo re definitely, as to the time the various parcels of the said Andrew's improvement were made, than above. The nett rents of this land per annum, should be the same for the like periods, in my opinion, as that of John Buchannon's. That the clearing and fencing of that part of the improved land, of the said 700 acres of land in the possession John McWilliams, are worth $20 per acre; on house upon it, $1000; barn and stable, $300; orchard, $300; land in a state of nature, now worth $8 per acre. Don't know at what time the improvements on this parcel were commenced, nor how they have progressed; recent clearing has been made, but how much cannot say. The nett rents per annum per acre, of this parcel, should be the same, for the like periods, as John Buchannon's; that the clearing and fencing of that part of the improved land, of the said 700 acres now in possession of John Camerer, are worth $20 per acre; house upon it worth, now, $600; barn, log-house, well and spring-house, now worth $200; orchard, $300; land in a state of nature, now worth $8 per acre. Camerer settled on this land about the year 1799; can't fix the time of the improvements with any certainty; should think the nett rents per acre per annum ought to be the same, for like periods, as John Buchannon's. That the clearing and fencing of that part of the improved land of the said 700 acres tract, now in the possession of David Wood, are worth $20 per acre; in a state of nature, I consider it now worth $8 per acre. Have no knowledge of the time it was cleared, except from information derived from Wood himself; I should consider the nett rent on this parcel the same, for the like periods, as John Buchannon's. That the clearing and fencing on that part of the improved land on the said 700 acre tract, now in the possession of Samuel Buchannon, are now worth $20 per acre; house upon it, $100; barn, $350; orchard and well, $350; land in a state of nature, now worth $8 per acre. Improvements commenced about the year 1799. Cannot fix the time when any particular improvement was made, nor the extent of any. Nett rent per annum I should fix at the same price, for the like periods, with John Buchannon's. That the clearing and fencing of that part of the improved land of the said 700 acres, lately in the possession of John, David, Henry and Daniel Fisher, was worth $18 per acre; house upon it, now worth $600; barn, $200; and orchard, $200; land in an unimproved state, now worth $6 per acre. Settled about the year 1799; can't fix the time of the improvements; I should think the nett rents per acre on this parcel, per annum, should be fifteen per cent. less, for the like periods, than the nett rents of John Buchannon's parcel; and further he says not.

DOWTY UTTER.

At the same time and place came also John Logan, of lawful

age, who first being duly sworn, deposes and says, that he has resided within a few miles of John Buchannon's, for the last thirty-three years; that the clearing and fencing of that part of the improved land of the said 700 acres tract, now in the possession of John Buchannon, is worth $13 per acre; house and kitchen on it, $850; barn and well, $200; orchard, $200; school-house, $90; and machine-house, $35; the land in a state of nature, I consider now worth $10 per acre. Cannot tell when the improvements on this parcel commenced, nor how they have progressed; for the most part they appear old, but some more recent. Witness is of opinion, that from the year 1807 until the year 1820, the annual nett rents, issues and profits of this parcel of land, might be fairly estimated to be worth one dollar and twenty-five cents per acre; from 1820 to 1830, one dollar and thirty-seven and one half cents, (1 37½); from 1830 to 1840, two dollars per acre. That the clearing and fencing that part of the improved land of the said 700 tract, now in the possession of Andrew Buchannon, is worth $13 per acre; house and other small buildings upon it, $300; stable and well, $150; orchard, $200; this land in a state of nature, I consider now worth $10 per acre. Fencing which encloses a sugar orchard, worth $2 50 per acre; supposed to be ten acres. The central part of this improvement bears marks of age; the outer parts appear to have been recently made, some of them quite recently. That which bears marks of age, I should judge the larger part of the improvement; I should fix the same nett rent upon this parcel, for the same periods, that I have upon John Buchannon's parcel. That the clearing and fencing on that part of the improved land of the said 700 acres, now in the possession of John M'Williams, is worth $13 per acre; house upon it $1000; stable and barn, $250; orchard, $200. This parcel in a state of nature, is worth, in my opinion, $9 per acre; not informed as to the time of the improvement of the parcels of the cleared land; one field of about 11 acres, appears to have been very recently improved; second crop supposed to be now on this field; in my opinion, a deduction of 25 per cent., on the nett annual rents of this parcel, should be made from the price fixed upon John and Andrew Buchannon's, for the like periods. That the clearing and fencing on that part of the improved land, upon the said 700 acre tract, now in the possession of John Camerer, is worth $13 per acre; house upon it, $600; barn and other small buildings, and well, $200; the orchard, $200; this land in a state of nature, is now worth, in my opinion, $8 50-100 per acre. The nett annual rent, in my judgment, should be the same as McWilliam's parcel. That the clearing and fencing that part of the improved land of the said 700 acre tract, now in the possession of David Wood, is worth $12 per acre; this land in a state of nature, now worth $9 per acre; nett rents, the same as those of McWilliam's and Camerer's. That the clearing and fencing on that part of the improved land

of the said 700 acre tract, now in the possession of Samuel Buchannon, is now worth $13 per acre; dwelling-house upon it, $150; barn, $300; orchard, $150; this land in a state of nature, is now worth $9 per acre; nett rents on this parcel, the same as the three last parcels, 25 per cent. off from John and Andrew Buchannon's. That the clearing and fencing that part of the improved land on the said 700 acre tract, lately in the possession of John, David, Henry and Daniel Fisher, is worth, $13 per acre; dwelling-house upon it, $600; barn, with several small buildings, $200; 2 orchards, one young, of grafted fruit, the other old, and bearing, $250; worth now, in a state of nature, $7 per acre. Part of this improvement has been made very recently. I think from 12 to 15 acres of it. The nett rents, issues and profits of this parcel, per annum, should be, in my judgment, 33⅓ per cent. less than those of John and Andrew Buchannon's parcels, for the like periods.

JOHN LOGAN.

Also, at the same time and place, came John Truse, of lawful age, who being first duly sworn, deposes and says—that he has resided in the Buchannon settlement, in this neighborhood, for about 38 years; that the clearing and fencing of that part of the improved land of the said 700 acre tract, now in the possession of John Buchannon, is worth $12 per acre; the house and kitchen upon it, $1050; the barn, $250; the orchard, $150; the school-house, $100; machine-house, $50; that this land is now worth, in a state of nature, $8 per acre. I saw this parcel of land first about the year 1802; there was then a small improvement: I should think not less than 3 nor more than 6 acres. I cannot now recollect what additional improvements were made in the years succeeding—thinks there may have been up to the year 1820, thirty acres cleared—there may have been more, there may have been less. Witness is under the impression that, as to the balance of the cleared land, there was more cleared between the years 1820 and 1830, than between the years 1830 and the present time; of this, though, he cannot speak with any certainty; cannot through any further light upon the time when the improvements were made. Some parts of the improved land *has* the appearance of having been recently cleared. It is my opinion, that from the year 1802 to 1810, the annual nett rents, issues and profits of this land, in cash, were worth about 75 cents per acre; from 1810 to 1820, one dollar per acre; from 1820 to 1830, one dollar per acre; from 1830 to 1835, one dollar and twenty-five cents per acre; from 1835 to 1840, two dollars per acre. That the clearing and fencing that part of the improved land of the said 700 acre tract, now in the possession of Andrew Buchannon, is worth $12 per acre; the house and other small buildings upon now worth $400; stable and well, $100; orchard, $100; that part of the land in his possession,

I consider worth, in a state of nature, $8 per acre. I am of the impression, that when I came to the neighborhood, in 1802, there were two small fields cleared on this parcel, containing, together, from 16 to 20 acres. I notice two fields that appear to have been recently cleared; the second crop is probably now on one of them. They contain, I should think, between 5 and 10 acres each. As to the time when the other parts of the improvement were made, I cannot speak with any certainty. I should estimate the annual nett rents of this parcel at the same price, for the like periods, that I have John Buchannon's parcel. I should consider the fence enclosing the sugar orchard worth, now, $20; that the clearing and fencing that part of the improved land of the said 700 acre tract, now in the possession of John McWilliams, is worth $12 per acre; brick house upon it now, worth $1000; barn, stables and other small buildings, worth $250; orchard, $150; this parcel, worth, now, in a state of nature, $8 per acre. There was cleared upon this parcel, prior to the year 1802, about 18 acres, according to the best of my judgment and recollection. There has been some cleared lately, perhaps within the last year or two; probably ten or eleven acres. As to the time of clearing the residue, or the quantity of it cleared within any given period, witness cannot speak with certainty. I should fix the annual nett rents of this parcel, at the same price per acre, for the like periods, as John and Andrew Buchannon's; on this parcel, about 40 acres of unimproved land is inclosed by a new fence, worth, in my judgment, at least $40; that the clearing and fencing that portion of the improved land of the said 700 acre tract, now in the possession of John Camerer, is now worth $12 per acre; brick house and kitchen on it, $600; barn and other small buildings, $200; orchard, $125; this parcel, in a state of nature, now worth $7 per acre. I became acquainted with this parcel at the same time, (1802.) I think there may have been at this time (1802), 18 or 20 acres cleared. For the succeeding 20 years, I think, Camerer cleared but little; his family consisted of daughters, and during six or seven years of the latter part of this period, he was afflicted with disease and unable to labor. From about the year 1823, on, his improvements have progressed gradually. I fix the nett unto the same, for the same periods, with the other parcels preceding. That the clearing and fencing on that part of the improved land of the said 700 acre tract, now in the possession of David Wood, is worth $12 per acre. This parcel, in a state of nature, I consider worth at this time $7 per acre. I don't know when these improvements were made: they did not commence as early as those on the other parcels: nett rent the same as the preceding parcels for the like periods. That the clearing and fencing on that part of the improved land of the said 700 acre tract, now in the possession of Samuel Buchannon, is worth $12 per acre; house and kitchen upon it, now worth $250; barn $250; orchard $150; worth, now, in a state of nature, $8 per

acre. I suppose there was between 20 and 25 acres cleared on this parcel when I first saw it, in 1802. From this time forth the improvements gradually progressed: cannot specify the time of any particular clearing, nor its extent. There has been some land opened within 2 or 3 years; probably 5 or 6 acres: nett rents per acre the same, for the like periods, as the preceding parcels. That the clearing and fencing that part of the improved land of the said 700 acre tract, lately in the possession of John, David, Henry, and Daniel Fisher, is worth $12 per acre; house upon it, now worth $600; barn $100; 2 orchards $150. This parcel, in a state of nature, now worth $7 per acre. Somewhere between 20 and 30 acres cleared when I first saw the premises, in 1802. The then occupant was at that time aided by several boys; and my impression is, cleared faster from that time on, than his neighbors on the other parcels. Several small parcels have been recently cleared, probably within the last 3 years—amounting together, to, perhaps, 10 or 12 acres. Nett annual rents, the same as the preceding parcels.

At the same time and place came also Joseph Dickson, of lawful age, who first being duly sworn, deposes and says, that he has resided in the Buchannon settlement upwards of 29 years; am acquainted with the improvements of the several plaintiffs on the said 700 tract; have been at log-rollings and raisings on all of their improvements except Fisher's. When I first came to the settlement, there had been cleared on John Buchannon's parcel, according to the best of my recollection, between 20 and 25 acres—that is, about the year 1811; from 1811 to 1820, it seems to me there was not much cleared; in the 2 or 3 years next succeeding 1820, I think there may have been 12 or 15 acres cleared; about the year 1828, I think there were about 7 acres cleared, according to the best of my recollection; there were cleared after 1828, and prior to 1833, about 15 acres *cleared;* there has been considerable cleared since 1833 and the present time; but since '33 I have not been so conversant of the opening of the land. There was cleared on Andrew Buchannon's parcel prior to the year 1811, according to the best of my recollection, between 25 and 30 acres; my impression is, that for several years succeeding 1811 there was none, or but little cleared; about the year 1820 there was a field cleared of 8 or 10 acres; about the year 1827 I think there was another small field cleared of 3 or 4 acres; about 4 or 5 years ago there was a field cleared of between 8 or 10 acres; since then, I think from one to two years ago, there was another clearing of 7 or 8 acres. There was cleared on the parcel now occupied John McWilliams, prior to the year 1812, according to the best of my recollection, near 20 acres; some time about the year 1820, perhaps a little later, there was a field cleared of 6 or 7 acres; about 9 years ago there were about 5 or 6 acres cleared; and within the last 2 or 3 years, there has been 4 or 5 acres cleared. As to the amount cleared when I

first came to the country, spoken of first above, my recollection is very indistinct: I was not as familiar with this parcel as some of the others. There was cleared on John Camerer's parcel, prior to 1820 or 1822, between 50 and 60 acres; for about 7 years next previous to 1822, I think he did not clear much—his health was bad; about the year 1823 he cleared about 16 acres, and 4 or 5 acres the next year, (1824); about 1825 he cleared another field of 5 or 6 acres; about the year 1827 he cleared about 8 acres; about 1835 he cleared about 4 acres; in 1836 he cleared 6 or 7 acres; in 1837 he cleared about 5 acres. There was cleared on David Wood's parcel, some time between the years 1814 and 1820, about 10 or 12 acres, (all cleared at the same time); and some time between 1822 and 1824, there was another field cleared of about 10 acres; and about 1827, about 2 acres more cleared. There was cleared on Samuel Buchannon's parcel, prior to the year 1820, between 30 and 35 acres, according to the best of my recollection. I think there was clearing done on this parcel between 1811, the time I came to the settlement, and 1820; but I cannot recollect the amount, nor the particular time. I think in 1822 or 1823, there was about 10 acres cleared; in 1823 or '4, another piece of 3 or 4 acres. I have no recollection of more having been cleared, until 2 years ago this spring, there was another field of 5 or 6 acres cleared. I was not so particularly acquainted with the improvements on this parcel 20 years ago, as with those on some of the other parcels. Since Samuel Buchannon settled on this parcel, some 7 years ago, he has squared some of the fields, and thus enclosed and improved several strips, amounting in all to from 3 to 5 acres. There was cleared on Fisher's parcel, prior to the year 1818, between 75 and 80 acres; about the year 1822 there was a small piece cleared of some 3 or 4 acres; and within the last 3 years there was a piece cleared, where the house now stands, of some 2½ acres; and in the spring of 1839 another piece of 5 or 6 acres. From the year 1820 to the year 1830, my opinion is, that the annual nett rents, issues and profits of the several parcels of land in the said 700 acre tract, would be worth about one dollar and 12½ cents per acre; from 1830 to 1835, one dollar and 37½ cents per acre; and from 1835 to 1839, one dollar and 62½ cents per acre; and for the year 1839, one dollar and 37½ per acre. I should consider the clearing and fencing on the several parcels of the improved parts of the said 700 acre tract, worth $18 per acre. I have been, since I came into this neighborhood, about the year 1811, both tenant and landlord: and further says not.

JOSEPH DICKSON.

At the same time and place came also Robert Gelbreth, of lawful age, who first being duly sworn, deposes and says—That he is of opinion that one dollar and twenty-five cents per acre would be a fair value for the annual nett rents, issues and profits of the seve-

ral parcels of land of the said 700 acre tract, in the possession of the several plaintiffs, from the year 1820 to the year 1830; from the year 1830 to 1835, one dollar and fifty cents per acre; from the year 1835 to the year 1840, one dollar and eighty-seven and a half cents: and further says not.

ROB'T. GALBREATH.

List of the Improved Lands within the 700 acre tract of land claimed by Edward Upshaw, lying and being on the waters of Indian Creek, in Beverly Roy's survey, No. 1064, in the County of Clermont, and State of Ohio—said list made by actual survey by me—to wit:

		A.	*P.*
On the Farm of	John Buchannon,	83	120
	Andrew Buchannon,	68	53
	David Wood,	25	80
	John Camerer,	112	32
	Fishers,	98	47
	John McWilliams,	65	45
	Samuel Buchannon,	68	27
	George Richards,	6	00
	Rolin Ireten,	2	00
	Samuel Iretorn,	1	80
Whole amount, *a.*		530	154

The surveying made on the outside of the fences; and there is included within John Buchannon's improvement, 3 or 3½ acres public roads; within Samuel Buchannon's, about 2 or 2½ acres; and within the McWilliam's improvement, about 1½ to 2 acres.

SQUIRE FRAZEE,
Surveyor for Clermont County, Ohio.

June 19th, 1840.

AUDITOR'S OFFICE, BATAVIA, CLERMONT COUNTY, OHIO, *June 13th*, 1840.

List of Taxes paid by John Buchannon, Andrew Buchannon, Samuel Buchannon, John McWilliams, John Camerer, David Wood, Adam Fisher and his successors, (John Fisher, David Fisher, Henry Fisher and Daniel Fisher,) and Jacob Iler, on the several tracts of land owned by them, in Survey No. 1064, (*Beverly Roy,*) *being part of a tract of land estimated to contain* 700 *acres, in said survey, from the year* 1820 *to the year* 1839, *inclusive.*

Years.	1820.	1821.	1822.	1823.	1824.	1825.	1826.	1827.	1828.	1829.	*Total Tax.
	$ c. m.	$ c. m.	$ c. m.	$ c. m.	$ c. m.	$ c. m.	$ c. m.	$ c. m.	$ c. m.	$ c. m.	
John Buchannon, - - -	2 27 5	1 46 3	1 95 0	1 95 0	1 62 5	1 95 0	5 17 6	6 38 8	5 50 7	5 39 5	
Interest, - -	2 73 0	1 65 3	2 10 6	1 98 9	1 56 0	1 75 5	4 34 7	4 98 2	3 96 5	3 56 0	
Andrew Buchannon, - - -	1 75 0		2 97 4	1 50 0	1 25 0	1 50 0	2 36 7	2 92 1	2 51 9	2 46 8	
John McWilliams, - - -	1 89 0	1 21 5	1 62 0	1 62 0	1 35 0	1 62 0	4 40 1	5 43 1	4 68 1	4 58 7	
John Camerer, - - -	2 64 3	1 69 9	2 26 5	2 26 5	1 88 8	2 26 5	2 90 9	3 58 9	3 09 5	3 03 2	
David Wood, - - -	98 0	63 0	84 0	84 0		1 75 7	1 15 1	1 42 1	1 22 5	1 20 0	
Samuel Buchannon, - - -	1 75 0	1 12 5	1 50 0	1 50 0	1 25 0	1 50 0	2 19 7	2 71 1	2 33 7	2 29 0	
Adam Fisher, - - -	2 45 0	1 57 5	2 10 0	2 10 0	1 75 0	2 10 0	2 83 8	3 50 2	3 01 9	2 95 8	
Jacob Iler, - - - -		31 0	41 2	41 2	34 4	41 2	61 1	75 4	65 0	63 7	
Amount paid each year, - -	13 73 8	8 01 7	13 66 1	12 18 7	9 45 7	13 10 4	21 65 0	26 71 7	23 03 3	22 56 7	

3-62.
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List of Taxes paid, &c.—Continued.

Years.	1830.	1831.	1832.	1833.	1834.	1835.	1836.	1837.	1838.	1839.	*Total Tax.
	$ c. m.	$ m. c.	$ c. m.	$ c. m.	$ c. m.	$ c. m.	$ c. m.	$ c. m.	$ c. m.	$ c. m.	$ c. m.
John Buchannon, - - -	6 82 8	6 82 9	6 16 7	8 59 0	6 16 7	5 68 6	6 18 0	9 06 4	8 44 6	10 91 8	108 55 4
Interest, - -	4 09 6	3 67 7	2 96 0								
Andrew Buchannon, - - -	3 11 3	3 12 5	2 82 3	3 92 9	2 82 1	3 25 7	3 24 0	5 19 2	4 83 8	6 25 4	57 84 1
John McWilliams, - - -	5 80 5	5 80 6	5 24 4	7 30 3	5 24 3	5 41 0	5 88 0	8 62 4	8 03 5	10 38 8	96 15 0
John Camerer, - - -	3 83 7	3 83 7	3 46 5	4 81 6	3 46 5	5 06 5	5 50 5	8 07 4	7 52 4	9 72 6	80 96 4
David Wood, - - - -	1 51 9	1 51 9	1 37 4	1 91 1	1 37 2	1 51 8	1 65 0	2 42 0	2 25 5	2 91 5	28 49 7
Samuel Buchannon, - - -	2 89 8	2 89 9	2 61 8	3 64 7	2 61 8	3 20 2	3 48 0	5 10 4	4 75 6	6 14 8	56 53 0
Adam Fisher, - - -	3 74 4	3 74 4	3 38 1	4 70 9	3 38 1	3 98 2	4 32 8	6 34 7	5 92 5	7 65 9	71 59 2
Jacob Iler, - - - -	80 4	80 4	83 4	72 8	2 05 6	86 9	94 5	1 38 6	1 29 2	1 66 0	15 11 6
Amount paid each year, - -	28 54 8	28 59 3	25 80 0	34 90 5	27 12 3	28 98 9	31 20 8	46 21 1	43 07 1	55 66 8	514 24 4

I certify the above to be correct, as appears from the books of this office.

J. DIAL, *County Auditor.*

Auditor's fees for the above, $3 00.
J. DIAL, *Co. Aud'r.*

John Buchannon's Parcel—Taxed 130 *Acres.*

First line of figures shows the years from 1st January, 1800, to 1st January, 1840; 2d line, the number of acres supposed to be added to the improvement each year; 3d line, the average cash value of nett rents per acre for different series of years; 4th line, gross sum on the improved land each year; 5th line, interest upon this amount from time it accrued to 1st January, 1840; 6th line, taxes each year; 7th line, interest upon them from the time when paid until 1st January, 1840. (Interest lines in red ink.)

Years.	1800.	1801.	1802.	1803.	1804.	1805.	1806.	1807.	1808.	1809.
Cleared land each year, - -	3	4	5	6	8	10	12	14	16	18
	$ c. m.									
Yearly value per acre, - -	0 91 6	0 91 6	0 91 6	0 91 6	0 91 6	0 91 6	0 91 6	0 91 6	0 91 6	0 91 6
Gross value each year, - -	2 74 8	3 66 4	4 58 0	5 49 6	7 24 8	9 16 0	10 99 2	12 82 4	14 59 6	16 58 8
Gross interest each year, - -	0 59 5	8 57 3	10 44 2	12 20 1	15 65 5	19 22 6	22 42 3	25 39 1	28 02 4	30 85 3
Tax for each year, - - -	0 84 0	0 45 5	0 52 0	0 52 0	0 65 0	0 84 5	0 84 5	0 84 5	0 97 5	0 97 5
Interest on taxes, - - -	2 01 6	1 06 4	1 18 5	1 15 4	1 40 4	1 77 4	1 72 3	1 67 3	1 87 2	1 81 3

Years.	1810.	1811.	1812.	1813.	1814.	1815.	1816.	1817.	1818.	1819.
Cleared land each year, - -	20	21	22	23	24	25	26	27	28	$2\frac{}{9}$
	$ c. m.									
Yearly value per acre, - -	1 18 7	1 18 7	1 18 7	1 18 7	1 18 7	1 18 7	1 18 7	1 18 7	1 18 7	
Gross value each year, - -	23 74 0	24 92 7	26 11 4	27 30 1	28 48 8	29 67 5	30 86 2	32 04 9	33 23 6	31 18 7
Gross interest each year, - -	42 73 2	43 37 2	43 87 1	44 22 7	44 44 1	44 51 2	43 44 1	44 22 7	43 87 1	44 42 3
Tax for each year, - - -	1 30 0	1 30 0	1 30 0	1 30 0	1 95 0	3 49 3	3 90 0	2 92 5	1 95 0	3 37 2
Interest on taxes, - - -	2 34 0	2 26 2	2 18 4	2 10 6	3 04 2	5 24 2	5 41 6	4 03 6	2 67 4	2 27 5
										4 09 5

Buchannon's Parcel—Continued.

Years.	1820.	1821.	1822.	1823.	1824.	1825.	1826.	1827.	1828.	1829.
Cleared land each year, - -	30	32	34	36	38	40	42	44	46	48
	$ c. m.									
Yearly value per acre, - -	1 18 7	1 28 0	1 28 0	1 28 0	1 28 0	1 28 0	1 28 0	1 28 0	1 28 0	1 28 0
Gross value each year, - -	38 40 0	40 96 0	43 52 0	46 08 0	48 64 0	51 20 0	53 76 0	56 32 0	58 00 0	61 44 0
Gross interest each year, - -	46 08 0	46 69 4	47 00 1	47 00 1	46 63 4	46 08 0	45 15 5	43 92 9	42 39 3	40 55 0
Tax for each year, - - -	2 27 5	1 46 3	1 95 0	1 95 0	1 62 5	1 95 0	5 17 6	6 38 8	5 50 7	5 39 5
Interest on taxes, - - -	2 73 0	1 66 7	2 10 6	1 98 9	1 57 0	1 75 5	4 34 7	4 98 2	3 96 5	3 50 0

Years.	1830.	1831.	1832.	1833.	1834.	1835.	1836.	1837.	1838.	1839.	1840.
Cleared land each year, - -	50	55	60	65	65	66	67	74	75	75	83
	$ c. m.										
Yearly value per acre, - -	1 84 0	1 84 0	1 84 0	1 84 0	1 84 0	1 84 0	1 84 0	1 84 0	1 84 0	1 84 0	
Gross value each year, - -	92 00 0	101 20 0	110 40 0	119 60 0	119 60 0	121 44 0	123 28 0	136 16 0	138 00 0	138 00 0	
											$2,077 59 1
Gross interest each year, - -	55 20 0	54 66 8	52 99 2	50 23 2	43 05 6	36 43 2	29 58 7	24 20 8	16 56 0	8 28 0	1,393 17 2
											1,436 36 1
Tax for each year, - - -	6 82 8	6 82 9	6 16 7	8 59 0	6 16 7	5 68 6	6 18 0	9 06 4	8 44 6	10 91 8	137 37 7
											137 37 7
Interest on taxes, - - -	4 09 6	3 68 7	2 96 0	3 60 7	2 22 0	1 75 5	1 48 3	1 63 1	1 01 3	0 65 5	100 90 0
											104 03 0
Betterments, &c. Clearing and fencing ($15 per acre) 83 3-4 acres, $1,255 00; other improvements, $1,431 25, - - -											2,686 25 0
One hundred and thirty acres of land, worth $10 per acre, in a state of nature, - - - - - -											1,300 00 0
Result: *Dr.* $4,813 95 2 *Cr.* $2,923 65 7 Balance,											$1,890 29 5

Statement—Continued.

Andrew Buchannon's Parcel—Taxed 100 *Acres.*

Years.	1800.	1801.	1802.	1803.	1804.	1805.	1806.	1807.	1808.	1809.
Cleared land each year,	10	12	14	16	18	20	22	24	26	28
	$ c. m.									
Yearly value per acre,	0 91 6	0 91 6	0 91 6	0 91 6	0 91 6	0 91 6	0 91 6	0 91 6	0 91 6	0 91 6
Gross value each year,	9 16 0	10 99 2	12 82 4	14 65 6	16 48 8	18 32 0	20 15 2	21 98 4	23 81 6	25 64 8
Gross interest each year,	21 98 4	25 72 1	29 23 8	32 53 6	35 61 4	28 47 2	41 11 0	43 52 8	45 72 6	47 70 5
Tax for each year,	0 60 0	0 35 0	0 40 0	0 40 0	0 50 0	0 65 0	0 65 0	0 65 0	0 75 0	0 75 0
Interest on taxes,	1 44 0	0 81 9	0 91 2	0 88 8	1 08 0	1 36 5	1 32 6	1 28 7	1 44 0	1 39 5

Years.	1810.	1811.	1812.	1813.	1814.	1815.	1816.	1817.	1818.	1819.
Cleared land each year,	30	30	30	30	30	30	30	30	30	30
	$ c. m.									
Yearly value per acre,	1 18 7	1 18 7	1 18 7	1 18 7	1 18 7	1 18 7	1 18 7	1 18 7	1 18 7	1 18 7
Gross value each year,	35 61 0	35 61 0	35 61 0	35 61 0	35 61 0	35 61 0	35 61 0	35 61 0	35 61 0	35 61 0
Gross interest each year,	64 09 8	61 96 1	59 82 4	57 68 8	55 55 1	53 41 5	51 27 8	49 14 2	47 00 5	44 86 8
Tax for each year,	1 00 0	1 00 0	1 00 0	1 00 0	1 50 0	2 68 7	2 25 0	2 25 0	1 50 0	1 95 0
Interest on taxes,	1 80 0	1 74 0	1 68 0	1 62 0	2 34 0	4 03 0	3 24 0	3 07 5	1 98 0	2 45 7

Andrew Buchannon's Parcel—Continued.

Years.	1820.	1821.	1822.	1823.	1824.	1825.	1826.	1827.	1828.	1829.
Cleared land each year, - -	30	40	40	40	40	40	40	44	44	44
	$ c. m.									
Yearly value per acre, - -	1 28 0	1 28 0	1 28 0	1 28 0	1 28 0	1 28 0	1 28 0	1 28 0	1 28 0	1 28 0
Gross value each year, - -	38 40 0	51 20 0	51 20 0	51 20 0	51 20 0	51 20 0	51 20 0	56 32 0	56 32 0	56 32 0
Gross interest each year, - -	46 00 8	58 36 8	55 29 6	52 22 3	49 15 2	46 08 0	43 00 8	43 92 9	40 55 0	37 17 1
Tax for each year, - - -	1 75 0		2 97 4	1 50 0	1 25 0	1 50 0	2 36 7	2 92 1	2 51 9	2 46 8
Interest on taxes, - - -	2 10 0		3 21 1	1 53 0	1 20 0	1 35 0	1 98 8	2 27 8	1 81 3	1 62 8

Years.	1830.	1831.	1832.	1833.	1834.	1835.	1836.	1837.	1838.	1839.	1840.	
Cleared land each year, - -	44	44	44	44	44	54	54	63	63	68		
	$ c. m.											
Yearly value per acre, - -	1 84 0	1 84 0	1 84 0	1 84 0	1 84 0	1 84 0	1 84 0	1 84 0	1 84 0	1 84 0		
Gross value each year, - -	80 96 0	80 96 0	80 96 0	80 96 0	80 96 0	99 36 0	99 36 0	115 92 0	115 92 0	125 12 0	$1,995 18 0	
Gross interest each year, - -	48 57 6	43 71 8	38 86 0	34 00 3	29 14 5	29 80 8	23 84 6	20 86 5	13 91 0	7 50 7	1,639 44 0	
											1,721 30 4	
Tax for each year, - - -	3 11 3	3 12 5	3 82 3	3 92 9	2 82 1	3 25 7	3 24 0	5 19 2	4 83 8	6 25 4	86 67 8	
Interest on taxes, - - -	1 86 7	1 68 7	1 83 3	1 65 0	1 01 5	0 97 7	0 77 7	0 93 4	0 58 0	0 37 5	64 70 7	
											66 80 5	
Betterments, &c. Clearing and fencing 68 1-3 acres of land, at $15 per acre, $1,025 00; other improvements, $712 50 - -											1,737 50 0	
One hundred (100) acres in a state of nature, worth $10 per acre, $1,000, - - - - - - -											1,000 00 0	
Result: *Dr.* $4,716 48 4 *Cr.* $1,889 94 Balance,											$2,826 50 0	

Statement—Continued.

John McWilliams'—Taxed 108 *Acres.*

Years.	1800.	1801.	1802.	1803.	1804.	1805.	1806.	1807.	1808.	1809.
Cleared land each year, - -	2	3	4	5	6	8	10	12	14	16
	$ c. m.									
Yearly value per acre, - -	0 91 6	0 91 6	0 91 6	0 91 6	0 91 6	0 91 6	0 91 6	0 91 6	0 91 6	0 91 6
Gross value each year, - -	1 83 2	2 74 8	3 66 4	4 58 0	5 49 6	7 32 8	9 16 0	10 99 2	12 82 4	14 65 6
Gross interest each year, - -	4 39 6	6 43 0	8 35 3	10 16 7	11 87 1	15 38 8	18 68 6	21 76 4	24 62 2	25 26 0
Tax for each year, - - -	0 64 8	0 37 8	0 43 2	0 43 2	0 54 0	0 70 2	0 70 2	0 70 2	0 81 0	0 81 0
Interest on taxes, - - -	1 55 5	0 84 4	0 98 4	0 95 9	1 16 6	1 47 2	1 43 0	1 38 8	1 55 5	1 50 6

Years.	1810.	1811.	1812.	1813.	1814.	1815.	1816.	1817.	1818.	1819.
Cleared land each year, - -	18	20	20	22	24	26	28	30	32	34
	$ c. m.									
Yearly value per acre, - -	1 01 0	1 01 0	1 01 0	1 01 0	1 01 0	1 01 0	1 01 0	1 01 0	1 01 0	1 01 0
Gross value each year, - -	18 18 0	20 20 0	20 20 0	22 22 0	24 24 0	26 26 0	28 28 0	30 30 0	32 32 0	34 34 0
Gross interest each year, - -	32 72 4	35 14 8	33 73 6	35 99 6	37 81 4	39 39 0	40 72 3	41 81 4	42 66 2	43 26 8
Tax for each year, - - -	1 08 0	1 08 0	1 08 0	1 62 0	2 90 1	3 24 0	2 43 0	1 62 0	1 08 0	1 08 0
Interest on taxes, - - -	1 94 4	1 87 9	1 81 4	2 62 4	4 52 5	4 86 0	3 49 9	2 23 5	1 42 5	1 36 0

John McWilliams'—Continued.

Years.	1820.	1821.	1822.	1823.	1824.	1825.	1826.	1827.	1828.	1829.
Cleared land each year, - -	36	38	45	46	47	48	49	50	51	51
	$ c. m.									
Yearly value per acre, - -	1 19 8	1 19 8	1 19 8	1 19 8	1 19 8	1 19 8	1 19 8	1 19 8	1 19 8	1 19 8
Gross value each year, - -	43 12 8	46 52 4	53 91 0	55 10 8	56 30 6	57 50 4	58 70 2	59 90 0	61 09 8	61 09 8
Gross interest each year, - -	57 75 3	53 03 7	58 22 2	56 21 0	54 05 3	57 75 3	49 30 9	46 72 2	43 99 1	40 32 5
Tax for each year, - - -	1 89 0	1 21 5	1 62 0	1 62 0	1 35 0	1 62 0	4 40 1	5 43 1	4 68 1	4 58 7
Interest on taxes, - - -	2 26 8	1 38 5	1 96 5	1 85 6	1 29 6	1 63 8	3 69 6	4 23 6	3 37 0	3 02 7

Years.	1830.	1831.	1832.	1833.	1834.	1835.	1836.	1837.	1838.	1839.	1840.
Cleared land each year, - -	51	57	57	57	57	57	57	57	60	65	65
	$ c. m.										
Yearly value per acre, - -	1 71 8	1 71 8	1 71 8	1 71 8	1 71 8	1 71 8	1 71 8	1 71 8	1 71 8	1 71 8	
Gross value each year, - -	87 61 8	97 92 6	97 92 6	97 92 6	97 92 6	97 92 6	97 92 6	97 92 6	103 08 0	111 67 0	$1,870 94 8
Gross interest each year, - -	52 57 0	52 88 0	47 00 4	41 12 8	35 25 3	29 37 7	23 90 2	17 62 6	12 37 9	6 70 0	1,399 99 9
Tax for each year, - - -	5 80 5	5 80 6	5 24 4	7 30 3	5 24 3	5 41 0	5 88 0	8 62 4	8 03 5	10 38 8	129 52 0
Interest on taxes, - - -	3 48 3	3 12 5	2 51 7	3 06 7	1 88 7	1 62 3	1 41 1	1 55 2	0 96 4	0 62 3	84 05 3
											86 65 0

Betterments, &c. Clearing and fencing 65 1-4 acres of land at $15 per acre, $978 75; other improvements $1,412 50, - - - 2,391 25 1

One hundred and eight (108) acres, worth, in a state of nature, $9 per acre, $972, - - - - - - 972 00 0

Result: *Dr.* $4,242 94 7 *Cr.* $2,507 42 6 Balance, $1,735 52 1

Statement—Continued.

John Camerer's Parcel—Taxed 251 *Acres.*

Years.	1800.	1801.	1802.	1803.	1804.	1805.	1806.	1807.	1808.	1809.
Cleared land each year, - -	5	7	9	11	13	15	20	25	30	33
	$ c. m.									
Yearly value per acre, - -	0 91 6	0 91 6	0 91 6	0 91 6	0 91 6	0 91 6	0 91 6	0 91 6	0 91 6	0 91 6
Gross value each year, - -	4 58 0	6 41 2	8 24 4	10 07 6	11 90 8	13 74 0	18 32 0	22 90 0	27 48 0	30 22 8
Gross interest each year, - -	10 99 2	15 00 4	18 59 6	22 36 8	25 72 1	28 85 4	37 37 2	45 34 2	52 76 1	56 22 4
Taxes for each year, - -	0 90 6	0 52 8	0 60 4	0 60 4	0 75 5	0 98 6	0 98 6	0 98 6	1 13 9	1 13 9
Interest on taxes, - - -	2 17 4	1 23 5	1 37 7	1 34 0	1 63 0	2 07 0	2 01 1	1 95 2	2 17 2	2 10 4

Years.	1810.	1811.	1812.	1813.	1814.	1815.	1816.	1817.	1818.	1819.
Cleared land each year, - -	37	40	43	45	47	48	51	52	53	54
	$ c. m.									
Yearly value per acre, - -	1 01 0	1 01 0	1 01 0	1 01 0	1 01 0	1 01 0	1 01 0	1 01 0	1 01 0	1 01 0
Gross value each year, - -	37 37 0	40 40 0	43 43 0	45 45 0	47 47 0	48 48 0	51 51 0	52 52 0	53 53 0	54 54 0
Gross interest each year, - -	67 26 6	70 29 6	72 96 2	73 62 9	74 05 3	72 72 0	74 17 4	71 47 7	70 65 9	68 72 0
Taxes for each year, - - -	1 51 0	1 51 0	1 51 0	2 26 5	4 05 7	4 53 0	3 40 0	2 26 5	1 51 0	1 57 0
Interest on taxes, - - -	2 71 8	2 62 7	2 53 6	3 66 9	6 32 8	6 79 5	4 89 6	3 12 5	1 99 3	1 90 2

John Camerer's Parcel—Continued.

Years.	1820.	1821.	1822.	1823.	1824.	1825.	1826.	1827.	1828.	1829.
Cleared land each year, - -	55	55	57	74	79	84	85	93	93	93
	$ c. m.									
Yearly value per acre, - -	1 19 8	1 19 8	1 19 8	1 19 8	1 19 8	1 19 8	1 19 8	1 19 8	1 19 8	1 19 8
Gross value each year, - -	65 89 0	65 89 0	68 28 6	88 64 2	94 64 2	100 63 2	101 83 0	111 41 4	111 41 4	111 41 4
Gross interest each year, - -	79 06 8	75 11 4	73 74 8	90 41 4	90 85 6	90 56 8	85 53 7	86 64 2	79 97 8	73 31 3
Taxes for each year, - - -	2 64 3	1 69 9	2 26 5	2 26 5	1 88 8	2 26 5	2 90 9	3 58 9	3 03 2	3 03 2
Interest on taxes, - - -	3 17 1	1 93 6	2 44 6	2 31 0	1 79 6	2 03 8	2 44 3	2 79 9	2 22 8	2 00 1

Years.	1830.	1831.	1832.	1833.	1834.	1835.	1836.	1837.	1838.	1839.	1840.	
Cleared land each year, - -	93	93	93	93	93	97	104	112	112	112	112	
	$ c. m.											
Yearly value per acre, - -	1 71 8	1 71 8	1 71 8	1 71 8	1 71 8	1 71 8	1 71 8	1 71 8	1 71 8	1 71 8		
Gross value each year, - -	159 77 4	159 77 4	159 77 4	159 77 4	159 77 4	166 64 6	178 67 2	192 41 6	192 41 6	192 41 6	3,219 07 8	
Gross interest each year, - -	95 86 4	87 27 7	76 69 1	67 10 5	57 51 8	49 99 3	42 88 1	34 63 4	23 08 9	11 54 4	2,475 45 5	
Taxes for each year, - -	3 83 7	3 83 7	3 46 5	4 81 6	3 46 5	5 06 5	5 50 5	8 07 4	7 52 4	9 72 6	109 11 0	
Interest on taxes, - - -	2 30 2	2 07 1	1 66 3	2 01 2	1 24 7	1 51 9	1 32 1	1 45 3	0 90 2	0 59 3	93 90 5	
											97 07 4	
Betterments, &c. Clearing and fencing 112 acres of land, worth $15 per acre, $1,680; other improvements, $990, - - -											2,670 00 0	
One hundred and fifty-one acres, worth now, in a state of nature, $8 37½ per acre, - - - - -											1,264 62 5	
Result: *Dr.* $6,959 15 8 *Cr.* $2,876 18 4 Balance,											$4,082 97 4	

Statement—Continued.

David Wood's Parcel—Taxed 51 *Acres.*

Years.	1800.	1801.	1802.	1803.	1804.	1805.	1806.	1807.	1808.	1809.
Cleared land each year, - -										
	$ c. m.									
Yearly value per acre, - -										
Gross value each year, - -										
Gross interest each year, - -										
Taxes for each year, - -	0 30 6	0 17 8	0 20 4	0 25 5	0 33 1	0 33 1	0 33 1	0 38 2	0 38 2	0 51 0
Interest on taxes, - - -	0 73 4	0 41 6	0 46 5	0 56 6	0 71 4	0 69 5	0 67 5	0 75 6	0 73 3	0 94 8

Years.	1810.	1811.	1812.	1813.	1814.	1815.	1816.	1817.	1818.	1819.
Cleared land each year, - -										12
	$ c. m.									
Yearly value per acre, - -										1 01 0
Gross value each year, - -										12 12 0
Gross interest each year, - -										15 27 1
Taxes for each year, - - -	0 51 0	0 51 0	0 51 0	0 76 5	1 36 6	1 53 0	1 14 7	0 76 5	0 51 0	0 51 0
Interest on taxes, - - -	0 91 8	0 88 7	0 79 6	1 23 9	2 13 0	2 29 5	1 65 1	1 05 5	0 67 3	0 64 2

David Wood's Parcel—Continued.

Years.	1820.	1821.	1822.	1823.	1824.	1825.	1826.	1827.	1828.	1829.
Cleared land each year, - -	12	12	12	12	23	23	23	25	25	25
	$ c. m.									
Yearly value per acre, - -	1 19 8	1 19 8	1 19 8	1 19 8	1 19 8	1 19 8	1 19 8	1 19 8	1 19 8	1 19 8
Gross value each year, - -	14 37 6	14 37 6	14 37 6	14 37 6	27 55 4	27 55 4	27 55 4	29 95 0	29 95 0	29 95 0
Gross interest each year, - -	17 25 0	16 38 8	15 52 5	14 66 2	26 45 1	24 79 8	23 14 5	23 36 1	20 56 4	19 76 7
Taxes for each year, - -		0 98 0	0 63 0	0 84 0	0 84 0		1 75 7	1 15 1	1 42 1	1 22 5
Interest on taxes, - - -	1 17 6	0 71 8	0 90 7	0 85 6		1 58 1	0 96 6	1 10 8	0 88 0	0 79 2

Years.	1830.	1831.	1832.	1833.	1834.	1835.	1836.	1837.	1838.	1839.	1840.
Cleared land each year, - -	25	25	25	25	26	26	26	26	26	26	26
	$ c. m.										
Yearly value per acre, - -	1 71 8	1 71 8	1 71 8	1 71 8	1 71 8	1 71 8	1 71 8	1 71 8	1 71 8	1 71 8	
Gross value each year, - -	42 95 0	42 95 0	42 95 0	42 95 0	44 66 8	44 66 8	44 66 8	44 66 8	44 66 8	44 66 8	$681 94 4
Gross interest each year, - -	25 77 0	23 19 3	20 61 6	18 03 9	16 08 0	13 35 0	10 67 0	7 99 0	5 36 0	2 68 0	361 97 0
											373 19 1
Taxes for each year, - -	1 20 0	1 51 9	1 51 9	1 37 4	1 91 1	1 37 2	1 51 8	1 65 0	2 42 0	2 25 5	2 91 5
											39 23 0
Interest on taxes, - - -	0 91 1	0 82 0	0 65 9	0 80 2	0 49 3	0 45 5	0 39 6	0 43 5	0 22 5	0 17 4	33 47 8
											34 51 3
Betterments, &c. Clearing and fencing 25½ acres of land worth $14 75 per acre, $376 12 8; no other improvements - - -											376 12 8
Fifty-one (51) acres of land, worth now, in a state of nature, $8 75 per acre, - - - - - - - -											446 25 0

50 ½ 77

Statement—Continued.

Samuel Buchannon's Parcel—Taxed 100 *Acres.*

Years.	1800.	1801.	1802.	1803.	1804.	1805.	1806.	1807.	1808.	1809.
Cleared land each year, - -	5	9	12	15	17	18	19	20	21	22
	$ c. m.									
Yearly value per acre, - -	0 91 6	0 91 6	0 91 6	0 91 6	0 91 6	0 91 6	0 91 6	0 91 6	0 91 6	0 91 6
Gross value each year, - -	4 58 0	8 24 4	10 92 2	13 74 0	15 57 2	16 48 8	17 40 4	18 32 0	19 23 0	20 15 2
Gross interest each year, - -	10 99 2	19 29 0	25 06 1	30 50 2	33 63 6	34 62 4	35 50 4	36 27 3	36 92 1	37 48 2
Taxes for each year, - - -	0 60 0	0 35 0	0 40 0	1 40 0	0 50 0	0 65 0	0 65 0	0 65 0	0 75 0	0 75 0
Interest on tax, - - -	1 44 0	0 81 9	0 91 2	0 88 8	1 08 0	1 36 5	1 32 6	1 28 7	1 44 0	1 39 5

Years.	1810.	1811.	1812.	1813.	1814.	1815.	1816.	1817.	1818.	1819.
Cleared land each year, - -	23	23	24	25	25	27	29	31	33	35
	$ c. m.									
Yearly value per acre, - -	1 01 0	1 01 0	1 01 0	1 01 0	1 01 0	1 01 0	1 01 0	1 01 0	1 01 0	1 01 0
Gross value each year, - -	23 23 0	23 23 0	24 24 0	25 25 0	25 25 0	27 27 0	29 29 0	31 31 0	33 33 0	35 35 0
Gross interest each year, - -	41 81 4	40 42 0	40 72 3	40 90 5	39 39 0	41 91 5	42 17 7	43 20 7	43 99 5	44 54 1
Taxes for each year, - - -	1 00 0	1 00 0	1 00 0	1 50 0	2 68 7	3 00 0	2 25 0	1 50 0	1 00 0	1 00 0
Interest on tax, - - -	1 80 0	1 74 0	1 68 0	2 49 0	4 19 1	4 58 0	3 24 0	2 07 0	1 32 0	1 26 0

Samuel Buchannon's Parcel—Continued.

Years.	1820.	1821.	1822.	1823.	1824.	1825.	1826.	1827.	1828.	1829.
Cleared land each year, - -	35	35	35	45	50	51	52	53	53	54
	$ c. m.									
Yearly value per acre, - -	1 19 8	1 19 8	1 19 8	1 19 8	1 19 8	1 19 8	1 19 8	1 19 8	1 19 8	1 19 8
Gross value each year, - -	41 93 0	41 93 0	41 93 0	53 91 0	59 90 0	61 09 8	62 29 6	63 49 4	63 49 4	64 69 2
Gross interest each year, - -	50 31 6	47 80 0	45 28 4	54 98 8	57 50 4	54 98 8	52 32 8	49 52 5	45 71 5	42 69 6
Taxes for each year, - - -	1 75 0	1 12 5	1 50 0	1 50 0	1 25 0	1 50 0	2 19 7	2 71 1	2 13 7	2 29 0
Interest on tax, - - - -	2 10 0	1 28 2	1 62 0	1 53 0	1 20 0	1 35 0	1 84 5	2 11 4	1 68 2	1 51 1

Years.	1830.	1831.	1832.	1833.	1834.	1835.	1836.	1837.	1838.	1839.	1840.	
Cleared land each year, - -	54	55	55	56	56	58	58	60	65	68		
	$ c. m.											
Yearly value per acre, - -	1 71 8	1 71 8	1 71 8	1 71 8	1 71 8	1 71 8	1 71 8	1 71 8	1 71 8	1 71 8		
Gross value each year, - -	92 77 2	94 49 0	94 49 0	96 20 8	96 20 8	99 64 4	99 64 4	103 08 0	111 67 0	116 82 4	$1,982 17 6	
Gross interest each year, - -	55 66 3	51 02 4	45 35 5	40 40 7	34 63 4	29 89 3	23 91 4	18 55 3	13 40 0	7 00 9	1,542 38 8	
											1,590 20 1	
Taxes for each year, - - -	2 89 8	2 89 9	2 61 8	3 64 7	2 61 8	3 20 2	3 48 0	5 10 4	4 75 6	6 14 8	77 36 7	
Interest on tax, - - - -	1 73 8	1 56 5	1 25 6	1 53 1	0 94 2	0 96 0	0 91 5	0 91 8	0 57 0	0 36 8	63 32 0	
											65 28 2	
Sixty-eight and one-ninth (68 1-9) acres of cle'd land, clear'g and fen'g, worth $15 p. acre, $1,021 66; other improv'ts, worth $667 50,											1,689 16 0	
One hundred acres (100) of land, now worth, in a state of nature, $9 per acre, $900, - - - - -											900 00 0	
Result: *Dr.* $4,472 37 7; *Cr.* $1,831 809; Balance,											$2,640 56 8	

Statement—Continued.

Fisher's Parcel—Taxed 140 *Acres.*

Years.	1800.	1801.	1802.	1803.	1804.	1805.	1806.	1807.	1808.	1809.
Cleared land each year,	10	15	17	20	25	27	29	32	35	37
	$ c. m.									
Yearly value per acre,	81 0	81 0	81 0	81 0	81 0	81 0	81 0	81 0	81 0	81 0
Gross value each year,	8 10 0	12 15 0	13 77 0	16 20 0	20 25 0	21 87 0	23 49 0	25 92 0	28 35 0	29 97 0
Gross interest each year,	19 44 0	28 43 1	31 39 5	40 40 4	43 74 0	45 92 7	47 91 9	51 32 1	54 43 2	55 74 4
Tax for each year,	0 84 0	0 49 0	0 56 0	0 56 0	0 70 0	0 91 0	0 91 0	0 91 0	1 05 0	1 05 0
Interest on taxes,	2 01 6	1 14 6	1 27 6	1 24 3	1 51 2	1 91 1	1 85 6	1 80 1	2 01 6	1 95 3

Years.	1810.	1811.	1812.	1813.	1814.	1815.	1816.	1817.	1818.	1819.
Cleared land each year,	40	42	44	47	49	51	53	55	57	60
	$ c. m.									
Yearly value per acre,	1 04 0	1 04 0	1 04 0	1 04 0	1 04 0	1 04 0	1 04 0	1 04 0	1 04 0	1 04 0
Gross value each year,	41 60 0	43 68 0	45 76 0	48 88 0	50 96 0	53 04 0	55 12 0	57 20 0	59 28 0	62 40 0
Gross interest each year,	74 88 0	75 80 3	76 87 6	79 18 5	79 49 7	79 56 0	79 37 2	78 93 6	78 24 9	78 82 4
Tax for each year,	1 40 0	1 40 0	1 40 0	2 10 0	3 76 1	4 20 0	3 10 0	2 10 0	1 40 0	1 40 0
Interest on taxes,	2 64 0	2 55 2	2 46 4	3 40 2	5 86 7	6 30 0	4 46 4	2 89 8	1 84 8	1 76 4

Fisher's Parcel—Continued.

Years.	1820.	1821.	1822.	1823.	1824.	1825.	1826.	1827.	1828.	1829.
Cleared land each year, - -	63	65	67	70	72	74	76	78	80	82
	$ c. m.									
Yearly value per acre, - -	1 06 0	1 06 0	1 06 0	1 06 0	1 06 0	1 06 0	1 06 0	1 06 0	1 06 0	1 06 0
Gross value each year, - -	66 78 0	68 90 0	71 02 0	74 20 0	76 32 0	78 44 0	80 56 0	82 78 0	84 90 0	87 02 0
Gross interest each year, - -	80 13 6	78 54 6	76 30 1	75 66 4	73 26 7	70 59 6	67 67 0	64 56 8	61 12 8	57 43 3
Taxes for each year, - -	2 45 0	1 57 5	2 10 0	2 10 0	1 75 0	2 10 0	2 83 8	3 50 2	3 01 9	2 95 8
Interest on taxes, - - -	2 96 0	1 79 5	2 26 8	2 14 2	1 68 0	1 89 0	2 38 3	2 73 1	2 17 3	1 95 2

Years.	1830.	1831.	1832.	1833.	1834.	1835.	1836.	1837.	1838.	1839.	1840.
Cleared land each year, - -	84	86	87	87	87	87	87	87	93	98	
	$ c. m.										
Yearly value per acre, - -	1 35 0	1 35 0	1 35 0	1 35 0	1 35 0	1 35 0	1 35 0	1 35 0	1 35 0	1 35 0	
Gross value each year, - -	113 40 0	116 10 0	117 45 0	117 45 0	117 45 0	117 45 0	117 45 0	117 45 0	125 53 0	132 30 0	$2,680 96 0
Gross interest each year, - -	68 04 0	62 69 4	56 53 6	49 32 9	42 28 2	35 23 5	28 18 8	21 14 1	15 06 6	7 93 8	2,291 69 0
Taxes for each year, - - -											2,362 73 2
	3 74 4	3 74 4	3 38 1	4 70 9	3 38 1	3 98 2	4 32 8	6 34 7	5 92 5	7 65 9	91 83 3
Interest on taxes, - - -	2 24 6	2 02 1	1 62 2	1 97 7	1 37 1	1 19 4	1 03 8	1 14 2	0 71 1	0 45 9	85 66 4
											89 08 9
Betterments: Clearing and fencing 98 47-180 of land, worth $14 50 per acre, $1,424 78 6; other improvements, worth $888 75,											2,313 51 6
One hundred and forty (140) acres of land, now worth, in a state of nature, $7 25 per acre, - - - -											1,015 00 0

Seq.

And thereupon the following depositions were filed as evidence in this case, to wit:

JOHN BUCHANNON, and others,
vs.
EDWIN UPSHAW.

UNITED STATES CIRCUIT COURT, *for the District of Ohio.*

The deposition of John L. Miner will be taken at my house, in the County of Clermont, State of Ohio, on Saturday the 20th inst., between hours of 10 and 4 o'clock on said day, before Esq. Frazee, a justice of the peace, within and for said county—the evidence to be read on hearing of the above case; when and where can attend and cross-examine if you think proper.

This 20th June, 1840.

JOHN BUCHANNON.

June 20th, 1840.

I received this notice this day,

EDWIN UPSHAW.

Circuit Court of the U. S. for the 7th Judicial Circuit and District of Ohio.

JOHN BUCHANNON, et al.
vs.
EDWIN UPSHAW, et al.

STATE OF OHIO, *Clermont County, ss.*

Deposition of Witnesses taken before me, Squire Frazee, a justice of the peace for Washington township, in the County of Clermont, between the hours of 10 o'clock, A. M. and 4 o'clock, P. M., of this 20th day of June, 1840, at the house of John Buchannon, in accordance with the notice hereto attached; to be read in evidence on the part of the plaintiffs, in a case now pending in the Circuit Court of the United States for the 7th Judicial Circuit and District of Ohio; wherein John Buchannon and others are plaintiffs, and Edwin Upshaw and others are defendants; which cause stands docketed thus:

John Buchannon et al. vs. Edwin Upshaw et al.

Personally came at the said time and place, John L. Miner, of lawful age, who being first duly sworn, deposes and says: that on the 17th or 18th day of June, A. D. 1840, at the house of John Buchannon, in the County of Clermont, he heard Edwin Upshaw, one of the defendants in this case, say he was in this State about 43 years

ago, and also about 40 or 41 years ago; that when first here he was about 18 years of age, and at that time (about the year 1797,) purchased the land upon part of which said John Buchannon now resides; his father assisting him to pay for it. My impression is, said Upshaw said, that when he was here the second time, that is about the year 1800, he was at the house of Mr. Samuel Buchannon, who then resided upon a part of the same survey, of which the 700 acres now in dispute between the parties to this suit, is the other part.

JOHN L. MINER.

At the same time and place, personally came Henry Jones, of lawful age, who being first duly sworn according to law, deposeth and saith, that a few days ago, in the town of Neville, County of Clermont, and State of Ohio, he heard Edwin Upshaw observe, that he was in this country forty-one or forty-two years ago, and Alexander Buchannon and William Buchannon were then living in the neighborhood. And the said Upshaw said further, that he was then, at the time alluded to, on a trip to Mad-river. Witness was acquainted with Alexander Buchannon, forty-one years ago, and he lived on the tract of land now in dispute, which he continued to occupy till the day of his death.

Ques. by E. Upshaw. Did I not say that I offered to make a deed many years ago to Messrs. Buchannons, provided they would pay me the money I had paid for the land?

Ans. My impression is, Mr. Upshaw said that at the second time he returned to this country, he told the Mr. Buchannons, that if they would pay him the money that he had paid for the land, they should have it, as he had a deed for the land, and that it was recorded in Cincinnati. The second time of his coming to this country, I understood to be about forty-one years ago.

HENRY JONES.

I, Squire Frazee, a justice of the peace in and for the township of Washington, in the County of Clermont and State of Ohio, do hereby certify, that the above named John L. Miner and Henry Jones were by me *were* first duly sworn, to testify the truth, the whole truth and nothing but the truth, and that the foregoing depositions by them respectively subscribed, were reduced to writing, to wit: John L. Miner's deposition by himself, and Henry Jones' by Alonzo Knowls, and were taken at the time and place specified in the above notice, hereunto attached, at which time and place both parties were present by themselves and attorneys.

In testimony whereof, I have hereunto set my hand this 20th day of June, A. D., 1840.

SQUIRE FRAZEE, *Justice of the Peace*, [L. S.]

JOHN BUCHANNON and others,
vs.
EDWIN UPSHAW.

UNITED STATES CIRCUIT COURT, *for the District of Ohio.*

The deposition of John Trees, Dowty Utter and others, will be taken before Squire Frezee, a justice of the peace within and for the township of Washington, County of Clermont and State of Ohio, at the school house in the town of Moscow, in said township and county, on the 24th day of June, A. D. 1840, between the hours of 10 o'clock, A. M. and 6 o'clock, P. M., on said day; to be read in evidence on the hearing the above cause. Also at the same place, on the 27th day of said June, A. D. 1840, between the hours of 10 o'clock A. M. and 6 o'clock P. M. on said day, the deposition of Thomas J. Buchannon will be taken before William Page, a justice of the peace, for said township and county, to be read in evidence on the hearing of said cause, at which time and place, you can attend and cross-examine, if you think proper.

JOHN BUCHANNON.

June 23d, 1840.

This notice was handed to me, and I have agreed to take depositions this day, provided they will also permit me to take depositions on this day, and this place.

EDWIN UPSHAW.

June 24th, 1840.

Deposition of witnesses taken in a cause pending in the Circuit Court of the United States, for the seventh judicial circuit and District of Ohio, wherein John Buchannon et al. *is* plaintiffs, and Edwin Upshaw et al. *is* defendants, in pursuance of the notice hereunto attached, and at the time and place therein mentioned.

Dowty Utter, of the County of Clermont, in the State of Ohio, of lawful age, being first duly sworn, as hereinafter certified, deposeth and says, that, on the 17th day of June, in the year 1840, he, the deponent, heard Edwin Upshaw, at the house of Andrew Buchannon, in the County of Clermont and State of Ohio, say that upwards of forty years ago he, the said Edwin Upshaw, was in the State of Ohio, and on Mad-river, attending to some surveying at the time the deed was recorded, or the time he got it recorded at Cincinnati.

Question by plaintiffs. What deed did you understand Mr. Upshaw to have allusion to?

Answer by witness. It is my impression that he had allusion to

Roy's deed to him, for the 700 acre tract of land that John Buchannon and others are at law about, with the said Edwin Upshaw.

Question 2d, by plaintiffs. Mr. Utter, did you ever hear Mr. Edwin Upshaw say any thing further about said deed at any other time; if so, state what did he say?

Answer by witness. I heard on this day, Mr. Edwin Upshaw state positively, that it was Roy's deed made to him, that he had allusion to, in his statement made to me on the 17th instant, at Andrew Buchannon's house, and that he was in Cincinnati the time said deed was recorded there, and that he would put an admission to that effect at the bottom of the deposition.

Question 3d, by plaintiffs. Mr. Utter, did or did not Mr. Edwin Upshaw say it was the deed for the 700 acres of land, in dispute, and that he was in Cincinnati at the time the deed for said land from Roy to him was recorded in Cincinnati?

Answer by witness. He did.

Question by defendant. Were not the following words the entire amount of Edwin Upshaw's admission, to wit: "That I was in Cincinnati about or at the time Roy's deed was recorded, and that I have a second deed Roy and wife on record for the same land?"

Answer by witness. Afterwards, to day, Mr. Edwin Upshaw said, that he had another deed from Roy and wife, but that he had no other deed recorded in Cincinnati.

DOWTY UTTER.

Also at the same time and place, came Jane Wood, of Clermont County and State of Ohio, who after being duly sworn, according to law, deposeth and saith, that John and Andrew Buchannon's father settled upon the farms now in dispute between John Buchannon and others, and Edwin Upshaw, now in the occupation of John Buchannon and Andrew Buchannon, in the County of Clermont and State of Ohio, in the last of February or first of March, in the year 1798, and that Adam Fisher settled on his farm the spring after, and that John Camerer settled on his in the spring of the year 1798, and the same spring of 1778, Samuel Buchannon's farm was settled by his father; and that John McWilliams' farm was settled in the spring of the year 1799, by James Buchannon.

JANE WOOD.

Also at the same time and place, came Thomas Philips, of lawful age, who after being duly sworn, deposeth and saith, that the Buchannons' farm in the County of Clairmont and State of Ohio, was settled by their father, in the last of February or first of March, 42 or 43 years ago last spring, and that John Camerer settled on his farm 42 or 43 years ago.

THOMAS PHILIPS.

Also at the same time and place, came Jacob Fee, of lawful age, who after being duly sworn, deposeth and says, that he heard Edwin Upshaw state, to-day, that he was in the State of Ohio at the time the deed from Roy to him was recorded in Cincinnati, and that it was the deed for the land in dispute between him and John Buchannon and others; and he also stated, that at the time the deed was recorded, it was all the deed he had for that land.

JACOB FEE.

Also at the same time and place, came David Boys, of lawful age, who after being duly sworn, according to law, deposeth and saith, that he heard Mr. Upshaw make the statements to-day, that Jacob Fee has deposed to in his deposition, and that he understood said statement as deposed to by Jacob Fee.

DAVID BOYS.

Also at the same time and place came David R. Welsh, of lawful age, who after being duly sworn according to law deposeth, and saith, that he heard Edwin Upshaw say to-day, that he was in Cincinnati at the time Roy's deed to him was recorded, and that he had no other deed recorded in Cincinnati for the 700 acre tract of land, now in dispute between him and John Buchannon, and others.

D. R. WELSH.

I, Squire Frazee, a justice of the peace, in and for the township of Washington, in the County of Clermont, and State of Ohio, do hereby certify that the above named Dowty Utter, Jane Wood, Thomas Phillips, Jacob Fee, David Boys and David R. Welsh, were by me first duly sworn to testify the truth, the whole truth and nothing but the truth, and that the foregoing depositions respectively subscribed by them were reduced to writing by me, and were taken at the time and place specified in the inclosed notice; the defendant attended during the taken of said depositions.

In testimony whereof, I have hereunto set my hand and seal, this 24th day of June, in the year 1840.

SQUIRE FRAZEE, [L. S.]
Justice of the Peace.

THE STATE OF OHIO,
Clermont County, ss.

I, J. D. Morris, clerk of the Court of Common Pleas, in and for the County and State aforesaid, do hereby certify, that Squire Frazee, Esquire, was on the 20th and 24th days of June, 1840, an acting justice of the peace within and for said County of Clermont, in the State of Ohio, duly commissioned and qualified, and full

faith and credit are due, and ought to be given to all his official acts as such in all courts of record, as well as elsewhere.

In testimony whereof, I have hereunto set my hand, and [L. S.] affixed the seal of said Court of Common Pleas at Batavia, in said county, this 26th day of June, A. D. 1840.

J. D. MORRIS,
Clerk.

Deposition of Thomas J. Buchannon, taken in a cause pending in the Circuit Court of the United States for the district of Ohio, wherein John Buchannon and others are plaintiffs, and Edwin Upshaw and others are defendants, in pursuance of the within notice hereto attached, and at the time and place therein mentioned.

Thomas J. Buchannon, of the County of Clermont and State of Ohio, of lawful age, being first duly sworn by me, as hereafter certified, deposes and says, that on or about the 17th of June, instant, he heard Edwin Upshaw state, that he was in Ohio something near forty years ago, or upwards of forty years ago, and that he staid all night with William Buchannon, near the land in dispute between John Buchannon and others, and himself and others; that he was on his way to Cincinnati for the purpose of having a deed recorded. John Buchannon asked Mr. Upshaw if he did not know that he, as well as others of the parties, resided on the land in dispute, at the time that he was at William Buchannon's. Upshaw replied, certainly he knew it; certainly he knew that they were residing on the land in dispute: and further this deponent saith not.

THOMAS J. BUCHANNON.

THE STATE OF OHIO,
Clermont County, ss.

I, William Page, a justice of the peace in and for Washington township, in said county and State, hereby certify, that the above named Thomas J. Buchannon was by me first duly sworn to testify the truth, the whole truth and nothing but the truth, and that the foregoing deposition by him subscribed, was reduced to writing by the said deponent, and was taken at the time and place specified in the within notice.

In testimony whereof, I have hereunto set my hand, this 27th day of June, A. D., 1840.

WM. PAGE, *J. P.* [L. S.]

THE STATE OF OHIO,
Clermont County, ss.

I, J. D. Morris, clerk of the Court of Common Pleas, in and for the county and State aforesaid, do hereby certify that William

Page, Esquire, was on the 27th day of June, 1840, and now is a justice of the peace, within and for said County of Clermont, duly commissioned and qualified, and full faith and credit are due and ought to be given to all his official acts, as such, in all courts of record as well as elsewhere.

In testimony whereof, I have hereunto set my hand and [L. S.] affixed the seal of said Court of Common Pleas, at Batavia, in said county, this 29th day of June, A. D., 1840.

J. D. MORRIS,
Clerk.

JOHN BUCHANNON, and others,
vs.
EDWIN UPSHAW.

UNITED STATES CIRCUIT COURT,
for the District of Ohio.

The deposition of John Payne and others will be taken in the County of Bracken, town of Augusta, State of Kentucky, before some suitable person authorized to take the same in said town, at the office of Martin Marshall, on the 27th instant, between the hours of 10 and 4 o'clock, on said day, to be read in evidence on the hearing of the above case; when and where you can attend and cross-examine if you think proper.

This 20th June, 1840. JOHN BUCHANNON.

June 20th, 1840.

I received this notice this day.

EDWIN UPSHAW.

Served by reading, and notice acknowledged.
This 20th June, 1840.

ROBERT FEE.

The deposition of John Payne, taken at the office of J. T. McKibbon, in the County of Bracken, town of Augusta and State of Kentucky, on the 27th day of June, 1840, agreeable to the notice herein enclosed, which by consent of the parties was agreed to be taken at said McKibbon's office, in lieu of M. Marshall's office, before the said McKibbon, a justice of the peace for said county, to be read as evidence on the part of John Buchannon and others, in a suit in the United States Court in the district of Ohio, wherein the said Buchannon and others are complainants, and Edwin Upshaw is def't.

The deponent being of lawful age, and first duly swron, deposeth and saith :

Quest. by comp't. Did you ever have any knowledge of any money being paid by Philip Buckner to Edwin Upshaw, or any of his agents, for lands now in dispute in Clermont County, Ohio, between the parties in this suit?

Ans. I am a legally and regularly licensed attorney and counsellor at law, and for many years have been practiseing as such; some years ago, shortly previous to the service of the declaration in ejectment by Edwin Upshaw, against the comp'ts in this cause, I was called upon by Edward Upshaw, (who produced a letter from Mr. H. Clay,) and was employed by him as his attorney and counsellor at law, to bring the said ejectments, and to act for him in the prosecution of the same, in which capacity I am yet acting; as such, I cannot recognise the right of any other person to interrogate me relative to any information received from him, as his attorney; previous to my being thus employed, he knew nothing of Mr. Upshaw, or the controversy now pending between the parties; at the same time said Upshaw executed to me a letter of attorney, by which I was authorised to do certain acts further than I should have been as his attorney at law; any information which I may be in possession of, not received from Mr. Upshaw, I am willing to depose to; I have no knowledge of any money being paid by Philip Buckner to Edwin Upshaw, or any other person as his agent, for the lands in controversy.

Question by same. Have you any knowledge of a deed having been made by Edwin Upshaw or any of his agents; or by John O'Bannon to Philip Buckner, for the lands in controversy in this suit?

Ans. I have not any recollection of ever having witnessed any such transaction.

Quest. by same. Have you ever seen any such deed as referred to above, on record or otherwise?

Ans. Not to my recollection. I am certain I never saw any such deed *on record;* nor have I any recollection that I ever saw such a deed. And further this deponent saith not.

JOHN PAYNE.

STATE OF KENTUCKY,
Bracken County, sct.

The foregoing deposition of John Payne was this day taken on the part of comp't in the presence of the parties, subscribed and sworn to before the subscriber, a justice of the peace for said county, at the time and place, and for the purposes mentioned in the caption hereof.

Given under my hand, this 27th day of June, 1840.

J. T. McKIBBEN, *J. P. B. C.*

Justice's fee $1 00; constable 12½, - - - $1 12½
Paid by comp't.

CIRCUIT COURT, U. S.
7th District of Ohio.

This day came personally before me, W. Miner, clerk of said court, John Buchannon, one of the complainants in the case of himself and others, against Edwin Upshaw et al., in said court in chancery, and being of lawful age, and first duly sworn, deposeth and saith, that the depositions now produced and this day filed, with the report in the above case made by the master commissioner, are the first testimony the complainants have ever been able to procure, to prove that the defendant, Upshaw, had been in the State of Ohio, at so early a period as to subject his claim to the operation of the statute of limitations; and he also states that said complainants have diligently enquired for such testimony for several years past, and were never able to obtain it, until since the rendition of the interlocutory decree in this cause at the last term of this court. He is also informed since the last term of this court, and verily believes that there are some papers, among the papers and documents belonging to the estate of Geo. F. Cotton, dec'd, late of Versailles, in the State of Kentucky, which will prove the payment of several sums of money to Maj. O'Bannon, agent for said Upshaw, by Philip Buckner, amounting to several hundred dollars, which was part of the purchase money of said land now in controversy; and that said payments were made at an early period, probably more than twenty-five years ago; this information has been obtained within a few weeks, and long since the last term of this court.

JOHN BUCHANNON.

Sworn to and subscribed in open court.

WM. MINER.

July 8, 1840.

And thereupon, the defendants, by their counsel, filed the following exceptions to the master's report, to wit:

JOHN BUCHANNON, et al.,
vs.
EDWIN UPSHAW, et al.

7th Ct. Ct. U. S., July Term, 1840.

The defendants except to the master's report: 1, Because the master has allowed rents and profits to the complainants for more than thirty years. 2, Because rents and profits are only allowed under the statute, for six years. 3, Other and various objections, &c.

G. SWAN,
Att'y for Deft.

And thereupon, the following interlocutory decree was entered in this case, to wit:

JOHN BUCHANNON, et al., Complt.,
vs.
EDWIN UPSHAW, Respt. } In Chancery.

The parties, by their solicitors, agree:

1st. That the report of John L. Miner, one of the masters of this court, except so far as respects the tax paid by the complainants on the lands in question, shall be set aside and held for nought.

2d. That the interlocutory decree of the last term, be so changed and modified as to conform to the decree of the present term.

3d. That Thomas H. Lynch, Esq., of Georgetown, Ohio, shall be appointed special master in the place *and that* of the said John L. Miner, to take the account between the parties in manner specified in the interlocutory decree of the present term.

4th. If, in such account being taken and returned by the master, and the court having settled the principles on which the respective claims of the parties shall be adjusted, it shall appear that any balance is due by the defendant, Upshaw, to the complainants or either of them, for valuable and permanent and lasting improvements made by them on the lands in question, for which the court shall adjudge them entitled to compensation, or by the complainants or any one of them, to the defendant, Upshaw, for rents, waste and destruction of timber or deterioration of soil by an injudicious course of husbandry, for which the court may hold him or them accountable, or said Upshaw entitled, then, in either of those cases, a decree shall, at the next term, be entered up in favor of the party to whom such balance may be found to be due, and execution may issue therefor as a judgement at law or otherwise, as the court may direct. And on such decree being rendered, the party or persons against whom the same may be rendered, shall enter, or cause to be entered, a release of errors so far as it refers to the proceedings, for rents and improvements, leaving the party the right to proceed to reverse the original decree, if error be found therein.

This agreement to be entered up as a part of the record of the proceedings in this case.

J. C. WRIGHT,
TH. L. HAMER,
Solicitors for Complainants.
THOMAS SCOTT,
T. EWING,
Solicitors for Deft. Upshaw.

The solicitors of the parties in this cause, having filed an agreement, it only remains for the court so to modify the interlocutory

order made at the last term, as to carry the same into execution. It is therefore now decreed and ordered, that the report of John L. Miner, Esq., the commissioner heretofore appointed in this cause, be set aside, except as to the tax paid by the complainants, and the interest thereon. That Thomas H. Lynch be appointed a commissioner or master in chancery, with power to ascertain the value of all lasting and valuable improvements made upon the lands in controversy in this cause, by each of the complainants or those holding and occupying under them, or by those under whom they claim, respectively, calculating and adding thereto interest at the rate of 6 per centum per annum, until the 1st day of the next term of this court, specifically stating the quality and date of making such improvements; that he shall ascertain the rents and profits as they have arisen, relative to such improvements, calculating the same up to the 1st day of January, 1841, with interest thereon, as before mentioned. That he shall estimate the useless and unnecessary destruction of timber thereon, as well as the reduction of soil by improper husbandry. That, in making his estimate and reports, he will, at certain periods, deduct the rents and profits from the value of the improvements, or the reverse, as it may be, calculating the interest upon the balance up to the next period, which periods will be the 5th of December, 1818, the 25th June, 1829, and the first day of the next term of this court; and for the purpose of enabling him to make said estimates and reports, he is authorised to call to his aid the surveyor of Clermont County, for the purpose of executing such surveys as the master or either party may require. He shall also have the power of calling before him any witness which may be necessary or required by either party, and shall also be authorised to withdraw the papers filed in this cause, as well as the papers filed in the ejectment cases between the parties in this court.

The master will report all and every matter of fact suggested by the parties, on which he may conceive necessary, to enable the court to make a final decree herein.

The master will, for the purpose of enabling him to report specifically, go upon each tract of land or tenement occupied by the complainants, and take the testimony in writing, relative thereto, particularly noting the value of each at the time when made, and also at the time the testimony is taken.

The commissioner will, ten days previous to the sitting of the next court, deliver to the counsel for each party a copy of his report to be made herein.

The court reserves all questions as to the time when rents and improvements shall commence, and the time for which improvements shall be paid for, together with cost, until the final hearing, at the same time setting aside the order of last court, so far as is compatible with this decree; and this cause is continued. The court order the fees charged by the master to be taxed with the costs in this case.

Wednesday, July 15th.

And now, at this day, to wit, the time and place first herein aforesaid mentioned, came the said parties by their counsel, and thereupon, Thomas H. Lynch, the master commissioner to whom this case had been referred, made the following report to the court here, to wit:

JOHN BUCHANNON, et al., *vs.* EDWIN UPSHAW. } Chy. U. S. C. C.

Personally appeared before me, the undersigned, a justice of the peace in and for said county, Thomas H. Linch, special commissioner in the above cause, who being duly sworn, deposeth and saith, that he will faithfully and impartially discharge the duties of his commission in the above cause, according to the best of his skill and understanding.

THOMAS H. LINCH.

Sworn and subscribed, this 9th day of November, A. D. 1840, before me, J. H. KING, *J. P.* [L. S.]

To the honorable the Judges of the United States Circuit Court for the District of Ohio.

Pursuant to a decree of your honorable court, entered at the term of July, 1840, in a suit in Chancery therein pending, wherein John Buchannon and others are complainants, and Edwin Upshaw and others are defendants, appointing the undersigned special master in chancery for certain purposes therein mentioned, having made oath faithfully and impartially to discharge the duties of his appointment, a certificate of which is herewith returned, the undersigned, on the 10th day of November, 1840, proceeded to the land in controversy, the parties being duly notified, and having summoned Thomas Mullen, James Timmons, Turpin Daughters, Elijah Larkin, Arthur Fee, Squire Frazee, Joseph Barkley, Thomas Wilson, and Jacob Fee, at the request of the parties, as witnesses, he proceeded with said witnesses on the 11th day of said month, to view and examine the premises and improvements in possession of each of said complainants, or those claiming under them, and continued on said land in controversy from day to day, until the testimony of said witnesses and of such other witnesses as either party desired, was also taken in writing under oath, relative to said premises.

He also called to his assistance Squire Frazee, the surveyor of Clermont county, and caused him to survey the land in controversy, and to ascertain the quantity claimed by each complainant, according to their respective deeds as set forth in their bill, as well as the quantity of cleared land in possession of each complainant,

as will appear from the deposition and plat of said survey herewith returned—while taking said testimony, the complainants and defendant, Upshaw, were present in person and by counsel. The tables, calculations and statements of the accounts between said parties herewith returned, have been carefully made out from the testimony thus taken. The clearing and fencing of the farms in question at the *time the work was done*, I have estimated to be worth $14 60 per acre; the clearing and fencing of the farms *as they now are*, at $20 per acre; that is, where the land is cleared smooth, and all the timber taken off. I have had considerable difficulty in ascertaining the value of the yearly rents and profits, not knowing the rule by which rents in cases of this kind are usually estimated. From the testimony it appears, that the *custom of the country* has been to give grain rent, at the rate of ten bushels of corn to the acre, or one third of a crop of small grain in the shock; ascertaining the value of corn per bushel for the respective periods, the rents might be easily estimated. The rents, if calculated in this way, would be considerably higher than they would be if put at the rate the witnesses estimate them at in *cash*. The witnesses who testify on this point agree, that the *general custom* of the country has been to give grain rent as above stated; and there is no great difference in their statements as to the price of corn within the respective periods, but they differ considerably in their estimates of the value of the rents in cash. In view of all the testimony, the value of the rents and profits herewith reported in the large tables and stated in the accounts, have been estimated by reducing the grain rent to cash, according to the price of corn per bushel, deducting therefrom one-fifth for repairs, and averaging the cash rent thus calculated with the cash rents as stated by the witnesses. The average yearly value of the rents arising on the farms in controversy, calculated in the manner above stated, would be at the rate of $1 51 cents per acre annually, from 1800 to the present time. But according to the evidence and the calculations made therefrom, rents have been higher since 1829, than they were within either of the other periods; and also higher from 1818 to 1829, than they were previous to 1818. I have, therefore, distributed the yearly value of the rents through the respective periods in such a manner as seemed to be warranted by the testimony. For the period up to 1818, the yearly rents are estimated at the rate of $1 12 per acre; for the period from 1818 to 1829, at the rate of $1 42 per acre; and for the period from 1829 to the present time, at the rate of $2 00 per acre, for each of said farms, except for the one called the Fisher farm; for this the rents are a little lower than the above rates.

The counsel for the def't, Upshaw, offered as evidence in this investigation, the depositions of Christopher Arrincost, James Burnott, Dowty Utter, John Logan, John Treese, Joseph Dickson and

Robert Galbreath, taken on a former occasion before John L. Miner, Esquire, master commissioner of your honorable court.

To this testimony the complainants objected; but neither party demanding a re-examination of said witnesses, and as said testimony had been taken by competent authority between the same parties in the same cause, and relative to the same matter in controversy, I did not feel authorised to reject it, but the same was received and has been referred to in connection with the testimony now taken, in ascertaining the *time*, value and *dates* when the respective improvements were made, and has not been considered important for any other purpose. The testimony taken before Mr. Miner relative to *dates*, does not conflict with the testimony taken on the present occasion, but is in support of it, so far as it goes. The calculations of the value of the rents of said land, have been made from the evidence now taken, and would be the same as already stated, either with or without that taken by your former commissioner, under the rule adopted for ascertaining the value of rents in *cash*, where grain rent has been the custom. In stating the account between said parties, justice required the same to be stated in a variety of forms, in order that the rights of the parties might, according to the principles that may be applied thereto, the more easily be ascertained. The two large papers marked A, contain the account with the complainant, John Buchannon, shewing the value of the improvements made on the land in his possession, and the rents and profits accruing thereon, with interest, as directed by said decree. By an examination of specifications, No. 1, 2, 3, of said account, it will be seen, that there is at this time due said defendant, E. Upshaw, from said John Buchannon, a balance of $988 86; the court will find attached to this account, a note relative to the increased value of the cleared land, and an orchard, to the amount of $763 20. This increased value of the cleared land has been produced by the natural decay and annual clearing off of the timber left standing when the land was first cleared, and is ascertained by deducting the price of the clearing, when the work was first done, at the rate of $14 60 per acre, from the present value of the clearing and fencing, at the rate of $20 per acre; the increased value of the orchard is ascertained by deducting the original cost of the orchard from its present value; said sum of $763 80 should be deducted from the above stated balance, if in the opinion of the court it be proper credit. In this account, said Buchannon is charged with additional rent for the house, barn and orchard, separate from the land. Specification No. 4, contains an account of improvements made prior to December, 1818, at which time the actions in ejectment were commenced, as appears from the papers in this cause; also an account of the rents and profits from 1818 to the present time; also an account of the increased value of the cleared land and orchard before referred to; also the rent of the orchard to the present time, from the year 1820. This account shews a balance due from

said Buchannon of $2,269 36. No. 5, exhibits an account, in which the complainant, John Buchannon, is allowed for all improvements made prior to 1829, when the action of ejectment was brought, upon which this suit is founded; and the defendant, Upshaw, is allowed rent for the land, house, barn and orchard, from that time; this account shows a balance in favor of said Buchannon, from said Upshaw, for improvements, of $6 60. No. 6, exhibits an account charging the complainant, Buchannon, with the rents and profits of the land, from 1819 to the present time, with interest thereon, and crediting him with all improvements made previous to 1819, at their *present* value, together with the tax and interest paid on the land; this account shews a balance in favor of said Upshaw, of $1,857 22. No. 7, exhibits an account charging said Buchannon, with the rent after 1828 to the present time; also with rent on the orchard to the present time, with interest on the same, and crediting him with all improvements made prior to 1829, at their present value; this account shews a balance due said Buchannon for improvements of $315 50. No. 8, 9, 10, exhibits an account shewing the improvements from 1801, to the present time, with interest thereon from the time they were made, at their cost value; also an account of the rents and profits for the same time, with interest thereon, with the balances stated at the respective periods, as directed by said decree; in this account said Buchannon is charged with rent on the land alone, exclusive of the house, barn and orchard; this account shews a balance in favor of said Buchannon of $2,313 90. No. 11, exhibits an account, in which said Buchannon is charged with rent *on the land alone*, from 1829 to the present time, inclusive, and credited with all improvements made prior to 1829, with interest; also with the increased value of the cleared land and orchard, and with the tax and interest; balance in favor of Buchannon, $1,648 64.

Upon the land in possession of John Buchannon there stands a school house, valued at $115; it is used as a neighborhood school house, and as a place of voting for the township: said school house has not been taken into the accounts stated, as above specified. There is also an old house, formerly used as a house in which a carding machine was kept in operation. It is now in a ruinous condition,—the floors torn out and unoccupied; it was valued by some of the witnesses at $45, but it was not carried into the accounts above mentioned, not being considered a "lasting and valuable improvement." There are also a number of black locust trees standing along the walk leading from the big road to the house; said trees are valued by some of the witnesses at $30; but, considering them more ornamental than valuable, they have not been taken into the account. These things are mentioned for the purpose of bringing them before the court, who are to decide thereon.

As to the lands in possession of the complainant, Andrew

Buchannon, the accounts are made out in full, and numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11; they are made out and stated in the same way as are those of John Buchannon, and the balances distinctly mentioned; it is, therefore, deemed unnecessary to swell this report by more minute details. See large papers marked B.

As to the lands in possession of John Cammerer, the accounts are made out in full, and numbered in the same manner as are those of John Buchannon. Upon this farm there is standing in the yard, within 200 yards of the brick dwelling house, a hewed log house with a stone chimney, in which a family now resides: and on another part of said farm there is a log cabin, with a shed room, smoke house, and stable; in the cabin another family resides. These buildings are charged in the accounts to the deft. Upshaw. See large papers marked C.

As to the lands in possession of David Fisher and others, accounts are made out and stated in the same manner as above mentioned. There is on this farm a comfortable log cabin, in which a family resides; also, a frame dwelling house; both of which are charged to defendant, Upshaw. There is also the remains of an old hewed log house, built more than thirty years ago; it is now in a state of dilapidation and ruin, uninhabited, and, from every appearance, has been so for several years: this was valued by some of the witnesses at $50, but was not carried into the accounts as stated. The fact is reported for the consideration of the court. See large papers marked D.

As to the lands in possession of John McWilliams, the accounts are made out and numbered similar to those already mentioned. See large papers marked E.

As to the lands in possession of Samuel Buchannon, the accounts are stated similar to those before mentioned. See large paper marked F.

As to the lands in possession of David Wood, the accounts are made out and stated similar to those above mentioned. There are no valuable buildings on this farm; the only one on it being an old cabin, in a ruinous and abandoned condition: one witness values it at $25, another at $35. The witnesses have generally placed the rents of this farm at the same rate as the other farms which have on them superior buildings and orchards. See papers marked G.

All of said farms have been cultivated and farmed in "farmer-like style;" have not suffered any deterioration of soil in consequence of improper husbandry; nor has there been any unnecessary waste of timber.

If the court should be of opinion, that I have adopted an incorrect rule for calculating the value of the yearly rents arising on said lands, and that the rents should be estimated according to the rates *in cash*, as stated by the witnesses examined by the undersigned, alone, without reference to grain rent, or the custom of the country before re-

ferred to; in that case there should be deducted from the amount of rents and interest on each of said farms, as calculated and stated in the accounts above specified, for the period up to 1818, one-ninth; from the amount of rents and interest, as calculated for the period from 1819 to 1828 inclusive, there should be deducted one-eighth; and from the amount of rents and interest calculated as arising on said lands, for the period from 1829 to 1840 inclusive, there should be deducted one-fourth. The average annual rents of said farms, calculated in the way just stated, would be, for the first period, at the rate of $0 99 6 per acre; for the second period, at the rate of $1 24 3 per acre; and for the third period, at the rate of $1 50. Deductions should be made from the amount of rents estimated on the Fisher farm, in the like proportion. By adding the amounts thus deducted, to the balances stated in the accounts made out as already mentioned, in favor of each complainant respectively, or deducting such amounts from the balances stated in favor of deft. Upshaw, the true balance between said parties will appear, according to the various forms in which said accounts have been stated. The time of making the various improvements on said farms, their value when made, and their present value, are particularly noted on the large papers before referred to, so far as the same could be ascertained from the witnesses. The dwelling house of John Buchannon is of brick; finished in a plain, comfortable manner; kitchen frame; barn frame; house, two stories. The dwelling house of Andrew Buchannon is of hewed log, partly weather-boarded, well finished for a farm house; frame kitchen; good frame stable. The dwelling house of John Cammerer is of brick, two stories high, comfortably finished; barn, hewed log. The dwelling house on the Fisher farm is a good frame, two stories, well finished for a farm house; barn hewed log. The dwelling house on the McWilliams' farm is of brick, two stories, comfortably finished; barn, hewed log; stable, frame. The dwelling house of Samuel Buchannon is of hewed log; the kitchen frame; the house is old; has been finished like common log houses in the country; his barn is a very good, substantial frame. The farms in possession of John and Andrew Buchannon and John Cammerer are, in a state of nature, worth $9 25 per acre. The Fisher farm is worth, in a state of nature, $7 85 per acre. McWilliams's farm, and the farm in possession of Samuel Buchannon, are worth, in a state of nature, $9 00 per acre. The land in possession of David Wood is worth, in a state of nature, $8 00 per acre.

The said deft., Upshaw, also referred to the following deeds and records, filed in this cause, as evidence upon this investigation, to wit: Deed from Beverly Roy to Edwin Upshaw, dated July 20th, 1797, and recorded in the office of the Recorder of Hamilton county, Ohio, on the 9th day of April, 1799. Deed from Roy and wife to Upshaw, dated 24th of August, 1817. The records in the actions of ejectment brought by the lessee of said Edwin Upshaw against

said complainants, in the United States Circuit Court for the District of Ohio, in December, 1818. The records in the actions of ejectment brought by the lessee of said Edwin Upshaw against complainants in said court in June, 1829.

The lands in question are situate in a fine region of country, within three miles of the village of Moscow, about five miles from the village of Neville, about four miles from the village of Point Pleasant,—all on the Ohio river, and about five miles from the village of Felicity, in the vicinity of several mills. There are two public highways leading through said lands. The quality of the soil is good.

The accounts are hereto attached as part of this report. The evidence upon which this report is founded, is herewith returned for the information of the court. The attendance of the witnesses is noted on the depositions. The surveyor's fee is marked on the platt by him made out, and herewith returned; one-half of his fee was paid at the time by deft. Upshaw.

The undersigned has endeavored to make out such a report, from the evidence before him, as will place the accounts between said parties fairly before the court. He has taken a great deal of time and pains in examining the subject in all its bearings, and he feels satisfied that the report he has made is a just and impartial report, presenting, so far as this investigation is concerned, the respective claims of the parties, in such a manner before the court, as will ensure the parties interested substantial justice. He has not deemed it his duty to express any argument for or against the claims of either party. If he has erred, in any of his proceedings herein, it is in judgment. As to compensation to your commissioner, the amount is left to the court, with reference to Gen. Payne, solicitor and att'y for deft., and to Mr. Hamer, counsel for complainants, the former of whom was present at the taking of all the testimony herewith returned, all of which is respectfully submitted.

THOMAS H. LINCH, *Special Master.*

Dec'r 8th, 1840.

Witnesses.

Thomas Mullen	attended	3 days,	
James Simmons	"	4 days,	
Turpin Daughters	"	2 days,	
Elijah Larkin	"	3 days,	
Arthur Fee	"	6 days,	
Squire Frazee	"	6 days,	
Joseph Barkley	"	6 days,	
Thomas Wilson	"	6 days,	
Jacob Fee	"	5 days,	
Henry Jones	"	4 days,	
		45 days, - -	$56 25

John Dobleyns, constable fees, for serving subpœnas, $5 00
Squire Frazee, surveyor's fees, as per report, 18 50
One half paid by deft., Upshaw.

THOMAS H. LINCH, *Master.*

Dec. 8th, 1840.

Note.—The rents on the farms in the foregoing report mentioned, were calculated upon each and every acre of cleared land, for each and every year, from 1800 to the present year inclusive.

A copy of this report has been delivered the counsel of each party, according to the order of said decree.

THOMAS H. LINCH.

Depos'ns.

Thomas Mullen being first duly sworn to testify the truth, the whole truth, and nothing but the truth, states, that he has been acquainted with that part of the tract of land in controversy between John Buchannon et others, and Edwin Upshaw, occupied by said John Buchannon since the year 1819; at that time, I believe about 40 acres were cleared and in a state of cultivation; I believe it to be worth now twenty dollars per acre, to clear land as that is cleared including the fences; the land was as well cleared of timber at that time, as it is now, with the exception of stumps. There is a two story brick house on the farm, a frame kitchen; the whole finished in a plain and common manner; I have known the house ever since it was built; cannot fix the year, but think it was built fourteen years ago; cannot say what it was worth at the time was built; do not know whether such work was higher then than it is now, never having built a brick house; the house at this time is worth twelve hnndred dollars; kitchen at this time worth one hundred dollars. There is one frame barn, which is now worrh two hundred dollars; it is a good substantial barn; it is 40 feet long by, I believe, 27 feet wide; there is an orchard of about 100 trees, worth four hundred dollars. There is a well, at the house, 30 feet deep, worth 40 dollars at present; the tract of land occupied by John Buchannon, I believe to be worth, in a state of nature, eight dollars per acre. The annual average rent of the said land from 1819 to 1829, would be worth ten bushels of corn per acre; no land at that time renting for cash in this neighbourhood. Corn was worth during that period from 16 to 20 cents per bushel. From 1839, to the present year, 1840, the average rent would be worth two dollars per acre. I would not be willing to pay more than half of the above rents, and keep the farm in good repair; about two-thirds of the improved land ought to be cultivated each year, for which the above rent should be paid. Such is the custom of the country. When one third of the ground is left uncultivated, it is generally with a view of raising a crop of small grain; and when a crop of small grain is raised, it is generally more profitable than corn; it is the custom

to give one-third of the wheat in the field. The ground occupied by J. Buchannon is as good as common land; an average crop of small grain, wheat for instance, would be from ten to fifteen bushels to the acre. The average price of wheat from 1819 to 1829, would be fifty cents. From the year 1829 to the present time, the average price of wheat has been seventy-five cents. When land is cleared smooth and clean, and well fenced, it is worth 20 dollars per acre. All Buchannon's is well cleared except a small piece which I have taken into account in the estimate I have made. The annual rent of the house, garden, kitchen and barn, would be worth fifty dollars. I do not know what kind of fruit grows in Mr. Buchannon's orchard; I believe it is seedling. The rent of the orchard is worth 20 dollars per year. This land lies two and a half miles from Moscow, on the Ohio river. When the above rents have been given, it has been customary to furnish the tenant with house, barn and other necessary conveniences; and I have known fields to be rented at the same rate, without house or barn; a single field I to lower rent. I consider it worth ten cents a bushel to haul in wheat from the field and take it to market. The above wheat crop raised on fallow grounds can only be raised once in two years. There were three years between the years 1819 and 1829, that the average crop of wheat per acre would not be more than 6 bushels, on account of the weavel. The orchard contains, I suppose, about 4 acres, which *was* not cultivated. In estimating the average value of wheat from 1819 to 1829, I took into consideration the injury done to the wheat on account of the weavel. The lands rented between the last named periods, have ordinary or common log buildings on them; between the years '29 and the present time, rented lands generally have only had log buildings on them. I have known one instance of the house and barn to be rented separate from the rest of the farm, not in this immediate neighbourhood; said house, kitchen, one acre of ground and half the barn, rented to a cooper for 50 dollars per year. The rest of the same farm, with a hew'd log house, with stone chimneys comfortably finished thereon, rented to another person at the usual rates of renting. Some more who rent with a view of supporting their families, would not give any more on account of a brick house being on a farm than if there were a log house. Some would give a good chance more. I would give some more on account of a brick house. I have known that part of said land controversy occupied by Andrew Buchannon since 1819. I do not know how much he had cleared; do not know whether he lived in the house, at that time, he now occupies. He now lives in a two story log house to which is attached a frame kitchen; house is finished above and below in a common workman-like manner; three rooms above, two below; kitchen not ceiled inside; it is not finished; the whole worth five hundred dollars. The stable and out buildings are worth one hundred and fifty dollars; the stable is frame. There

is an orchard of about 80 good trees worth 300 dollars. The land occupied by him is worth, in a state of nature, eight dollars per acre. The land is well cleared, but the fencing is not all good; part of it is good. I consider it worth 17 dollars per acre to clear and fence land as that is cleared and fenced. With respect to rents and profits, I would say the same as to the land occupied by Andrew Buchannon that I have said in regard to the land occupied by John Buchannon. The rent of the house and stable would be worth 36 per year; the orchard worth 15 dollars; the rent of an orchard depends materially upon the kind of fruit produced. I do not know what kind of fruit his orchard produces. The farm appears to have been farmed in a farmer-like manner. I do not believe there has been any unnecessary destruction of timber; nor do I know of any unnecessary destruction of timber upon the farm of John Buchannon. In Andrew Buchannon's orchard, there are about two acres not cultivated.

I have known the farm occupied by John Cammerer about sixteen years, since 1824. I do not know how much land he had cleared at that, nor at this time. On his place is a two story brick house, 27 ft. long by 18 ft. wide; to the house is attached a brick kitchen; the house is not finished above, below it is finished in a plain, substantial-like manner, also the kitchen; house and kitchen worth one thousand dollars. There is a log barn and some outbuildings, worth two hundred and fifty dollars at present; the barn is old but the logs are good; it has a good floor; a well worth forty dollars; there is an orchard, worth 200 dollars; part of his fences are good, some are not so good; the land is well cleared; it is worth 19 dollars per acre to clear and fence land in the manner that his is cleared and fenced now. I would say the same as to rents and profits of the land occupied by him, that I have said of the land of John Buchannon; the soil is of the same description, and the rents, for the respective periods, would be the same as the land occupied by John Buchannon. The house, kitchen and barn should rent for 40 dollars a year; orchard would rent for 12 dollars per year. The land occupied by said Cammerer in a state of nature, is worth 7 dollars per acre. The land has been cultivated in farmer-like manner. I do not believe there has been any unnecessary destruction of timber. I would be willing to take the farms above named, in the condition they now are, for a number of years, and keep them in as good repair as I find them, and pay $150 per acre annually, (with the exception of natural wear;) at that rate I believe said farms would have rented, from 1829 to the present time. I would only be willing to pay for what I might cultivate, and it is usual to cultivate two-thirds of the improved part of a farm.

I have known the farm of John Fisher and others since the year 1818. I do not know how many acres were cleared at that, nor at the present time. The land is now well cleared and fenced. It

is worth 20 dollars per acre to clear and fence land as that is cleared and fenced. There is on the farm, at this time, a new frame house, two story, well finished above and below, worth eight hundred dollars,—a hewed log barn, and some other out-buildings, worth 200 dollars at this time. There is an orchard of 30 trees of grafted fruit, and one of about 100 trees; the two are worth 400 dollars. This farm, in a state of nature, is worth seven dollars per acre. The annual average rent of this land, from 1818 to 1829, worth eight bushels of corn to the acre. From 1829 to the present time, the annual average rent would be worth one dollar per acre, the tenant keeping it in as good repair as he found it during that period, and fencing the same in like manner as I have stated of John Buchannon's farm. There is the remains of an old hewed log house, the house now having neither windows nor floors. The house could not have been originally built for less than 250 dollars; at present, it is worth about fifty dollars. In forming my estimate of the value of the orchards, I have been governed by information rec'd from others. Annual rent of the orchards worth 20 dollars. It is probable, that if the fence in 1819 were good, a man might have been willing to have paid ten bushels of corn to the acre until 1829. If a farm were received in good repair in 1829, it would not take one-third of the rent to keep it in good repair up to the present time. I think it would take about one-fourth. There is a cabin on this farm that is occupied by a family; I have included that cabin in the estimate of the value I have made of the out-buildings. The frame house, garden, barn, &c., would rent for 36 dollars a year. The house I have spoken of as standing in a ruinous state, was, in 1818, old Mr. Fisher's. The estimate I have made of the rent of the orchard, is in reference to such seasons as the orchard bears fruit. Orchards in this country bear fruit about every other year on an average. In every orchard there may be some trees that bear fruit every year. I do not know whether the orchard on this farm bears every year or not.

I have known the McWilliams' farm since the year 1818. At that time there was built the brick house and barn that are there now. The house at present is worth thirteen hundred dollars; barn and milk-house, and out-buildings in the yard, are worth at this time 200 dollars; there is a frame stable, worth 250 dollars; there is an orchard of about 100 trees, worth 300 dollars. The land is well cleared and fenced, as the other farms I have spoken of. It is worth 20 dollars an acre to clear and fence land as that is cleared and fenced. This land, in a state of nature, is worth eight dollars. The land has been farmed in a good farmer-like manner. I have seen no destruction of timber. I would say the same as to the rents and profits of this farm as I have said of the farm of John Buchannon, and John Cammerer. The house, barn, stables, garden, and out-buildings, worth 50 dollars a year rent. In the orchard there are four acres; the orchard worth 15 dollars per year

rent. I do not wish to be understood that the land in the above farms would rent at the rates I have stated, exclusive of the use of the buildings. It has been customary, also, for farms having common log houses on them, to rent for the prices stated; and I have known but few farms with brick houses on, to rent.

I have known the farm occupied by Samuel Buchannon since 1818. There is a log house and frame kitchen: house two storys, stone chimney; lower part finished like common houses. House, kitchen, out-houses, worth 200 dollars. A frame barn, nearly finished; it is a good substantial barn, worth 350 dollars. A well, 21 ft. deep, worth 30 dollars. The land is well cleared and under good fence. Worth 20 dollars per acre to clear and fence land as that is cleared and fenced. There is an orchard of one hundred and nine apple trees, worth 300 dollars. I would say the same, as to the rents, profits, &c. for this farm, as I have said of the farms of John Buchannon, John Cammerer, and of McWilliams' farms,—house and barn worth 24 dollars per year rent; orchard worth 15 dollars per year rent. This farm, in a state of nature, is worth eight dollars per acre.

I have examined that portion of said land occupied by David Wood. There are no buildings on the land occupied by said Wood. The land is well cleared and fenced. Worth 20 dollars per acre to clear and fence the same. I would say the same as to the rents and profits of this land as I have said of the farm of John Buchannon, Cammerer and David Fisher; worth, in a state of nature, eight dollars per acre. Saw no destruction of timber. The land had been farmed in a farmer-like manner.

THOMAS MULLEN.

Attended three days.

William McWilliams being duly sworn, states, that he believes that the brick house on the farm occupied by his father, was built in the year 1818; according to the best of his knowledge that was the year when said house was built. The stone milk-house was built the same year.

WM. McWILLIAMS.

James Simmons, who being duly sworn, states, I have known the land occupied by John Buchannon about 30 years. What land he had cleared then, was well cleared for the time. Such land as his, from 1810 until 1818, would rent at the rate of one dollar per acre, clear of expense and repairs. The average annual rent from 1818 to 1829 for such land as this, would be one dollar per acre, the tenant keeping up the repairs; from 1829 to present time, this land would rent at the rate of one dollar and twenty-five cents per acre, clear of repairs, taking all the clear land together, buildings and orchard. I consider it worth 20 dollars per acre to clear and fence land as John Buchannon's is cleared and

fenced. The brick house and kitchen are worth thirteen hundred dollars. The house is finished in a plain substantial manner. His frame barn is a moderately good barn, worth 200 dollars at present. Orchard, worth 400 dollars. The well is worth 40 dollars. I do not know when any of the above buildings were put there. The farm I believe to have been worked in farmer-like manner. Saw no destruction of timber. This land, in a state of nature, is worth eight dollars per acre.

I have known the farm occupied by Andrew Buchannon about thirty-three years. Cannot state how much land was cleared at that time. The house now occupied by him was not then built. Do not know when any of the improvements were put on said farm. I would say the same, as to the rents of this farm, from the time I first knew it, in 1807 until the present time, for the respective periods, as I have said of the rents of John Buchannon's farm. It would rent at the same rates. His land is well cleared. Some parts of the fence *is* not quite so good as ought to be. The clearing and fencing of this land is worth $19 50 per acre. The house he occupies is a log house, (hewed logs,) finished in a plain manner. It is worth 350 dollars. Stable is a good frame, worth 150 dollars at present. Orchard of about 80 trees, worth 300 dollars. The land has been cultivated in a farmer-like manner. I believe there has been no unnecessary destruction of timber. In a state of nature, this land is worth 8 dollars per acre.

I have known the land occupied by John Cammerer about 25 years; as to the rents of this land, it would rent at the same rate as that of Buchannon for the respective periods above stated. It is well cleared and fenced, worth $19 50 per acre to clear and fence this land. His dwelling house of brick, and kitchen, worth $750; barn and small log house worth 200 dollars; well worth 35 dollars; orchard worth 250 dollars; land worth, in state of nature, seven dollars per acre; saw no destruction of timber; the land has been properly farmed. I have known the Fisher farm since 1805; there was some land cleared there, but how much I do not know. From 1805 to 1818, one dollar per acre would be a fair annual average rent. From 1818 to 1829, it would not rent for so much, on account of its having been considerably worn; it would be worth 75 cents per acre, tenants keeping up the repairs. From 1829 to the present time, I would put the rent at 75 cents per acre; the clearing and fencing of this land, in the manner it has been done, is worth $19 50 per acre; the frame house, two story, well finished for a farm house, worth 750 dollars; the barn and some small out buildings, are worth 200 dollars. There are two orchards, one small; the two are worth 250 dollars. The land, in a state of nature, worth six dollars and fifty cents per acre; it has been worked in farmer-like style. I have known the McWilliams' portion of said land in controversy, about 37 years; since the year 1803, the nett annual rent of said land, at an average, from 1803 to

1829, would one dollar per year, the tenant keeping up repairs. From 1829 to the present time, the nett annual average rent would be one dollar and twenty-five cents, the tenants keeping up repairs; the clearing and fencing of said land is now worth 20 dollars per acre. I estimate the brick dwelling house at 1300 dollars. If said house were built in the year 1818, it could have been put there at that time for 1300 dollars. The barn, when first built, was worth about 300 dollars; the barn, stable and milk house are worth $300 now; the orchard is worth 300 dollars; land, in a state of nature, worth eight dollars per acre. I have been acquainted with the farm occupied by Samuel Buchannon since the year 1803. I put the rent the same as the Mc Williams' farm for like periods. House and kitchen at present worth 200 dollars; house, I think, was built near thirty years ago, or between 25 and 30 years ago; cost, when built, about 300 dollars; barn is worth 400 dollars, substantial frame; orchard worth 300 dollars; in a state of nature, land worth eight dollars. From the time I first knew the land in dispute, the general custom of the country was, up to 1818, to rent for grain, at ten bushels of corn to the acre at the heap, if good land; the average price of corn at that time was 17 cents per bushel; of small grain it was customary to give a third, in the shock; such land as are the farms above specified, would produce, during the period up to 1818, from 10 to 15 or 16 bushels of wheat to the acre. From 1818 to 1829, I knew as many farms rented for grain as for cash, and for cash as for grain; grain rent during that period ten bushels to the acre, if corn. I do not know what was the custom of the country when cash rent was paid. The estimates I have made of cash rents, were made from what I have rented myself, and what I have known others to rent for. From 1829 to the present time, when grain rent has been given, it has been customary to give ten bushels of corn to the acre, delivered in the crib, or one third of the wheat measured up.

JAMES SIMMONS, Sen.

Turpin Daughters, being duly sworn, states, that he has examined the brick house on the land in controversy, occupied by John Buchannon; the house and kitchen I consider worth 1100 dollars in its present situation; do not know when said house was built; his barn is worth at present 250 dollars; other small out buildings are worth 50 dollars; said house is finished in a plain manner. I have also examined the house and other buildings on the land occupied by Andrew Buchannon; I consider his house and kitchen worth at present 275 dollars; it is a hewed log house, partly weather boarded; his barn I estimate at 150 dollars. I have examined the house and buildings on that part of the land in controversy, occupied by John Cammerer; his house and kitchen, I think, are worth 800 dollars; barn and other out buildings are worth 100 dollars. I have examined the house and buildings on

the Fisher part of said tract of land; the frame house is worth six hundred dollars; his barn worth 150 dollars. I have also examined the buildings on that part of said land lately occupied by McWilliams; the brick house, I think, is worth 11 hundred dollars; other out buildings and barn, I think, are worth 100 dollars; the stable is not included in the above estimate. I have also examined the buildings on that part of said tract of land, occupied by Samuel Buchannon; his house, I consider worth 150 dollars; his barn, I think, is worth 600 dollars. I have lived in a small village for 22 years. My opportunities for knowing the value log buildings have not been good; for knowing the value of frame and brick buildings, my opportunities have been better. I have never put up any log buildings. I lived in the village of Neville, 4½ miles from this place (the land in dispute.) For the last two years I have lived near to Neville. During the period above stated, I have been considerably conversant with the price of erecting brick buildings. I have had but little brick work done; but I have informed myself of the price of brick work. The average price of corn, in my opinion, from 1818 to 1829, was about 18 cents per bushel; from 1829 to 1835, the average price of corn was 20 cents; from 1835 up 1839 inclusive, the average price of corn was about 40 cents per bushel; the present year the price of corn is 20 cents per bushel. The general custom of the country since I have lived here, has been to rent for grain rent; and then to give from eight to twelve bushels of corn to the acre; and to give one-third of the crop of small grain, in the shock; as far as my knowledge extends, I have not known the buildings to be rented separate from the farm. I have not known any farms having extraordinary buildings thereon to be rented; the farms I have known rented have had common log or small frame buildings on them. The buildings above specified by me, would be inducements for better farmers to take hold of said farms; but I doubt whether any more rent could be obtained on account of the superior quality of said buildings. It has been customary to deliver corn rents at the heap; to deliver corn at Neville, on the river, from the land in dispute, I suppose would be worth four cents per bushel. The rent of land in dispute would be worth ten bushels per acre of corn, judging from information. I do not know what is the custom of the country as to keeping up repairs; good farmers leave out a portion of their land every year for fallow. I am not very conversant with the mode of farming in this neighborhood; but I know that they leave out a portion for fallow generally. I do not know in what manner the lands in dispute have been farmed. I have seen fallow fields lying out.

(Attended 2 days.) TURPIN DAUGHTERS.

Elijah Larkin, being duly sworn, states, that he has known the land in possession of John Buchannon since the year 1816. I have examined the improvements made on said land; the clearing

and fencing I consider worth fifteen dollars per acre. I estimate his house and kitchen at present to be worth 1100 dollars; his barn and other out-buildings I consider worth 500 dollars; the fruit trees and locust trees at 250 dollars; I consider the locusts alone worth thirty dollars; well worth sixty dollars; the land, in a state of nature, I consider worth 12 dollars per acre. Said land, from 1816 to 1829, would rent for $1 50 per acre, the tenant keeping up the repairs. From 1829 to the present time, the rents would, in my opinion, be the same, the tenant keeping up the repairs. This land has been farmed in farmer-like manner.

I have known the farm in possession of Andrew Buchannon the same length of time; to clear and fence his land is worth 15 dollars per acre; his house I estimate at 350 dollars; barn and all other out-buildings are worth 300 dollars; orchard worth 200 dollars; as to rents I would say the same as I have said of John Buchannon's; in a state of nature, land worth 12 dollars per acre. I have known the farm occupied by John Cammerer about 12 years; worth 15 dollars per acre to clear and fence his land; his house is worth 950 dollars; barn and other out-buildings 240 dollars; orchard 175 dollars; well 50 dollars; land in a state of nature, 11 dollars per acre; from the time I have known said farm the annual average rents would be 1 37½ per acre, the tenant keeping up repairs; this farm has been cultivated in farmer-like manner.

The farm lately occupied by *the* David and John Fisher, I have known for 12 or 13 years; to clear and fence said land, worth 15 dollars per acre; the land in a state of nature worth ten dollars per acre; the annual average rent of this land is worth 1 25 per acre, the tenant keeping up the repairs; at that rate it would have rented since I have known it; the frame dwelling house is worth 400 dollars; the barn and all other out-buildings, 200 dollars per acre; the old orchard is worth two hundred and twenty-five dollars; it has been farmed in farmer-like manner. I have known the McWilliam's farm for more than 20 years; it is worth 15 dollars per acre to fence and clear that land; in a state of nature, land worth 12 dollars per acre; annual rents per acre since I have known said farm would be worth one dollar and fifty cents; the brick dwelling house is worth 1,150 dollars at present; the barn, stable, and other out-buildings I consider worth three hundred and fifty dollars; orchard worth two hundred and twenty dollars. I have known the farm occupied by Samuel Buchannon for more than 20 years; to clear and fence said farm would be worth fifteen dollars per acre; land in a state of nature, worth 12 dollars per acre; annual average rents for said farm, from the time I have known it, would be $1 50 per acre, the tenant keeping the place in repair; dwelling house and kitchen worth 250 dollars; barn and other out-buildings 500 dollars; orchard is worth two hundred dollars; well worth 30 dollars; I cannot state the time when the above improvements named were made, on any of the farms. I have examined that portion of said

land in possession David Wood, in a state of nature it is worth eight dollars; to clear and fence the land is worth fifteen dollars; the annual average rents for the periods stated, as to other farms named by me, would be one dollar and twenty-five cents per acre; no buildings as I saw on said land. I have lived in the village of Neville for 24 years past, and previous to that time I lived five or six years in the neighborhood of Mr. Sargeant, about five miles from this tract of land now in dispute. I have not been in the habit of having land cleared, nor have I employed any person to clear land; I do not consider myself a competent judge on the subject; what I know I have learned from observation, and information received from those engaged in the business; I form my opinion from what I heard persons say, who have taken contracts for doing different parts of the clearing; I have been agent for several years to rent tracts of land and procure fences to be made; I do not know the prices paid for clearing only as I have learned it from my own observation in seeing work done, and information derived from those who have had such work; having frequently heard people talk on the subject; I cannot name any particular person who has told me the price of clearing: in clearing land, if the land be cleared entirely clear, and all the timber taken off at once, it would be worth 20 dollars to clear land in that way per acre; but the way nine-tenths of the land in this country has been cleared, and the way in which land is generally cleared, I estimate it at fifteen dollars per acre. I have never been in the habit of building or having buildings put up; I have seen a great deal done, and have aided people in making calculations. In reference to rents, I have made my estimates from general information. A number of years back ten bushels of corn per acre was given; three years ago a farm in this neighborhood was rented for two dollars and fifty or seventy-five cents per acre; it was put up at public auction; this farm was of superior soil to the land now in dispute; I have understood that land in this neighborhood has rented at from eight to ten bushels of corn per acre; generally at ten bushels.

The above farm, that was rented at auction, I thought *it* went rather high; the average price of corn from 1818 to 1829, was 25 cents per bushel; perhaps between 20 and 25 cents—20 cents at the heap; worth 5 cents more to deliver at river; the above stated prices is guess work with me; from 1829 to the present time, 25 cents per bushel, at the heap, would be the average price; the house and barn of John Buchannon, if a man wanted to rent it, would rent for fifty dollars per year; I suppose his orchard would rent for 20 or 30 dollars, but this is guess work. Andrew Buchannon's house and stable would rent for 40 dollars per year, if any person wanted to rent; his orchard is worth 20 dollars per year, hazzarding fruit or no fruit. John Cammerer's house and barn is worth 30 dollars per year; his orchard is worth 20 dollars a year; there is a small hewed log house on the farm of John Cammerer, occu-

pied by a family. The frame dwelling-house and barn on the Fisher tract would rent for about 40 dollars; it would be a mere chance whether any person would want to rent such property; the orchard thereon is worth 25 dollars per year rent. The brick dwelling-house on the McWilliam's place would rent, if at all, for about 50 dollars; the orchard thereon worth from 25 to 30 dollars. The house and barn of Samuel Buchannon would perhaps be worth 40 dollars per year; his orchard worth about 20 dollars per year. On the Fisher farm there is a small house, hewed log, occupied by a family; I placed no value upon the remains of the old dwelling-house, on the Fisher farm. States that he acted as a justice of the peace in this, Washington township, 15 years. Witness now one of the associate judges of the county of Clermont; during my public life there have been before me many controversies respecting framing, fencing, rents, and improving farms; from this source I have derived most of my information on the subject. So far as my information extends, most of the farms I have known for rent, have only had on them, generally, common log buildings. The estimates that I have made of the above rents, have been made with reference to the farms having comfortable buildings of any description upon them; some men would not give more for a farm having such a house as John Buchannon's; some would give more. In the estimate I have made to-day of the rents of the above farms, I took into consideration the buildings on said farms, but not the orchards particularly, and all the cleared land fit for cultivation. If the houses and buildings were not there, I should consider the rents of the farms worth as much less as I have estimated the rents of the houses. If said farms had on them houses equally as comfortable as those that are on them, though of log, the farms would rent for as much. The estimate I have made of the rents of the above farms *over* the same as if said farms had on them comfortable log building (Attended 3 days.) ELIJAH LARKIN.

James Simmons called again. During the periods before named by me, when first examined, it was customary for the landlord to keep up the repairs when a farm is in good repair; it will take about one-fourth of the rents to keep a farm in good repair. I do not know whether the brick house on the McWilliams' farm has had a new roof since it was built or not; if it has not had a new roof, and needs one, I would deduct the price of a new roof from the estimate I have made of the present value; I do not know that the barn has had a new roof since it was built. I do not know that the house of Samuel Buchannon has been new roofed since it was built. In making my estimate of the above rents, I allowed that one third of the farm was left out when grain was paid. I also have made my estimates from my own contracts, and the general rule in my neighborhood: when I speak of leaving out one-third, I have reference to that part of the farm cultivated in grain. I do not know

whether the farms in contest have been farmed in that way or not; further saith not. JAMES SIMMONS, Sen'r.

(Attended 4 days.)

Arthur Fee, being duly sworn, states that has known the farm on the land claimed by Edwin Upshaw, in the possession of John Buchannon, since the year 1818. I cannot state how many acres of cleared land there were at that time; the brick dwelling-house and kitchen are, in my opinion, at this time, worth 1300 dollars. The house, in 1825, would have cost, I believe, about 1500 dollars; his barn and shed are at present worth 225 dollars; cannot say when they were built; orchard and locust trees are worth 400 dollars; the locusts are alone worth 30 dollars. There are two wells on the place; the two are worth, at present, 50 dollars; smoke-house, and other out-buildings, are worth 150 dollars; school house is worth 150 dollars. For fencing and clearing said land, I estimate it at twenty-two dollars per acre; the land, in a state of nature, worth eleven dollars. From 1818 to 1829, the nett annual average rent of said farm, in cash, after deducting all expenses for repairs, would, in my opinion, have been about 75 cents per acre. From 1829 to the present time, the nett annual average rent, in cash, for said farm, would be one dollar per acre, clear of all expenses. In the above estimates, I have supposed the tenant to have the use of all the buildings on said farm; I did not include the orchard; I suppose the orchard on this place should rent for ten dollars per year, of a fruit-bearing season; in this neighborhood, orchards will not bear fruit oftener than three years out of five. I have known the farm of Andrew Buchannon since the year 1818; I cannot state how many acres of land were at that time cleared on said farm; his dwelling-house and kitchen are at present worth 420 dollars; I do not know when they were built; stable and other buildings are worth 200 dollars; orchard worth 350 dollars; one well, worth 15 dollars; for clearing and fencing, 22 dollars per acre would be a fair price at present; land in a state of nature, 11 dollars per acre. The land in possession of Andrew Buchannon would rent at the same rate as John Buchannon's, for the same periods; the orchard should rent for nine dollars per year. I have examined the farm and improvements in possession of John Camerer; the brick dwelling-house and kitchen are worth 950 dollars; barn, and other out-buildings, worth 250 dollars; well, thirty feet deep, worth 40 dollars; orchard, of ninety-two trees, worth 325 dollars; the clearing and fencing this land is worth 22 dollars per acre; land in a state of nature, worth eleven dollars per acre; this farm would rent at the same rates as that of John Buchannon, for the like periods; orchard should rent for nine dollars per year; I have also examined the farm and improvements lately occupied by David Fisher, and others; I have known said farm since the year 1818; I cannot state how many acres were at that time cleared; the frame dwelling-house on said farm is now worth 700 dollars; the barn, and other out-buildings, are at present worth 220 dollars; 30 small,

and 100 large apple trees, worth 420 dollars; and a small house in the field, occupied by a family, worth 60 dollars; clearing and fencing this land, is worth 22 dollars per acre; the land in a state of nature, worth 11 dollars per acre; I believe this farm would rent at the same rate as the farm of John Buchannon, for the like periods; orchard would rent for 11 dollars per year, of a fruit-bearing season; I have examined the farm and improvements, lately, in the possession of John McWilliams, and now in the possession of David Fisher; I have known said farm since the year 1818; the brick dwelling-house on said farm, I suppose, at this time, to be worth 1,400 dollars; barn and stable worth 350 dollars; barn alone worth 200 dollars; stable worth 150 dollars; spring-house, and other out-buildings, are worth 75 dollars; orchard worth 400 dollars; clearing and fencing this farm is worth 22 dollars per acre; land in a state of nature, worth 11 dollars per acre; the rent of this farm would be the same as that of John Buchannon, for the like periods; the rent of the orchard should be ten dollars per year, of a fruit bearing season. I have also examined the farm and improvements in possession of Samuel Buchannon; I have known said farm since the year 1818, but I cannot state the respective periods when any of the improvements were made; his dwelling-house and kitchen, at this time, are worth 250 dollars; barn, substantial frame, 58 by 28 feet, worth 425 dollars; orchard worth 400 dollars; well, worth 15 dollars; clearing and fencing this farm is worth 22 dollars per acre; land in a state of nature, worth 11 dollars; this farm would rent at the same rates as the farm occupied by John Buchannon, for the like periods; orchard worth 10 dollars per year, of a fruit-bearing season; I am a farmer by occupation; I have built brick, frame and log buildings; the general custom of the country, from 1818 to 1829, was to rent for grain; when corn was given, in the neighborhood where I reside, five or six miles from the land in dispute, about ten bushels to the acre, on average, at the heap, was given; when wheat was paid, the custom was to give one-third in the shock. From 1829 to the present time, I believe the general custom has been to rent for grain; I do not know that the rent has varied much from ten bushels to the acre; wheat rent has generally been one-third, in the shock; the land in the survey in dispute, is rather superior in quality to the land in my neighborhood. From 1818 to 1829, the custom of clearing and fencing, among farmers generally, was to take off a foot, and under; getting it ready for the plough, would be worth $15 per acre; to cut the trees a foot and under, down, and pile the brush, would be worth from three to three and a half dollars per acre; to burn the logs and brush, make rails and build the fence, after clearing, in the manner spoken of, would be worth from ten to twelve dollars per acre; farms that have rented at the rates I have given, for the above periods, have generally had on them common log buildings; the farms above specified by me, would have rented at the rates I have estimated, if they had only had on them common, comfortable log

buildings; farms having good barns ought to rent for more than those having no barns; the value of an orchard depends upon the kind of fruit principally, and size of the trees; I suppose that an orchard ought to rent for at least the legal interest on the value of the orchard. What I mean by a fruit season, is when an orchard produces a full crop of fruit; I know not whether the orchards specified above are seedling, or grafted; in the estimate for grain-rent, the above rents would be paid for the number of acres cultivated; generally one-third lay out for fallow; the greater part of each of the farms in question were cleared clean when I first saw them, except Mr. Cammerer's; after land has been cleared in the manner specified by me, and made fit for the plough, it would be worth from six to eight dollars to clear off the balance of the timber as it would fall; in estimating the nett rents, as above, I supposed the tenants to have the buildings, and part of the orchards; I do not know that orchards would rent for the legal interest on the value of said orchards; I put the rents of the orchard low, on account of the tenant having the benefit of a part of orchard. Between the years 1818 and 1829, the average price of corn at the heap, would be from 15 to 18 cents per bushel; for the same period, the average price of wheat was sixty cents per bushel; to get wheat out of the shock, and take to market, would be worth about ten cents per bushel. From 1829 to the present, the average price of corn, at the heap, has been about 31 cents a bushel; the average price of wheat, for said period, has been, I believe, 68 cents per bushel; to get out corn, and take to market, would be worth four and a half cents; land of the quality in dispute, should produce, on an average, twelve bushels to the acre; and further deponent saith not.

(Attended 6 days.) ARTHUR FEE.

Squire Frazee, being duly sworn states, that he is the acting county surveyor for Clermont county, Ohio, and that the paper attached to these depositions and marked A, contains an accurate statement, made from actual survey, and measurement of the quantity of cleared land, in possession of each of the parties named, including fences and public roads; that the paper attached to these depositions, marked B, contains a like statement of the quantity of cleared land, in possession of each party named, exclusive of fences and public highways, and also the whole number of acres in possession of said parties, and also the whole number of acres in the survey of Beverly Roy, No. 1064. I have known the farm in possession of John Buchannon since the year 1827. The most of his farm was cleared previous to that time; I consider it worth at this time 20 dollars per acre, to clear and fence land as his has been cleared and fenced; his brick house and kitchen are worth at present, thirteen hundred dollars; his barn at present is worth three hundred dollars; two wells, are worth 75 dollars; his

orchard I think is worth five hundred dollars; it was a bearing orchard when I first knew it. I think said farm would have rented, from 1827 to the present time, on an average, nett rent, at one dollar per acre, for all the cleared land fit for cultivation, the tenant occupying the buildings, having the enjoyment of the orchard, and keeping up repairs; this land in a state of nature, is worth eight dollars per acre; the farm has been worked in good farmer-like style since I have known it. I have seen no unnecessary destruction of timber; I have known the farm in the possession of Andrew Buchannon, since the year eighteen hundred and twenty-seven; I cannot state the time when any of his improvements were made; his dwelling-house and kitchen are worth at this time, in my opinion, 600 dollars; his stable and other out-buildings, are worth 300 dollars, including his well; stable alone, is worth 150 or 200 dollars; orchard, worth 400 dollars; clearing and fencing his land, is now worth 20 dollars per acre. I would say the same as to the nett rents of this farm, as I have said of the farm of John Buchannon. This land in a state of nature, is worth 8 dollars per acre. I have examined the farm and improvements of John Camerer, having known said farm since about the year 1827; his dwelling-house and kitchen was built about the year 1834, the cost of which in that year, I suppose, was something like 1300 dollars; its present value I think, is 1200 dollars; his barn and other out-buildings, are worth 300 dollars; well, is worth 40 dollars; orchard, is worth 300 dollars; clearing and fencing land, is worth 20 dollars per acre; said farm would rent at the same rate as that of John Buchannon's, for the same period, from 1837; to the present; land, in a state of nature, 7 dollars per acre. I have examined the farm lately occupied by David Fisher, and others; I have known said farm since the year 1827; the frame dwelling-house on said farm, is now worth, in my opinion, eight hundred dollars; barn, cabin and smoke-house, are worth 200 dollars; the small and large orchard, are worth 400 dollars; this land in a state of nature, worth 7 dollars per acre; the shell of an old house in the field, is worth 50 dollars; clearing and fencing said farm, is worth 20 dollars per acre; the nett annual average rents, would be the same as the farm of John Buchannon, for the like period. I have known the McWilliams farm, for the same length of time, from 1827; the brick dwelling-house is worth 1300 dollars; log barn and out-houses, are worth 200 dollars; frame stable, worth 150 dollars; orchard of about 100 trees, is worth 400 dollars; this farm would rent at the same rate as that of John Buchannon; land, in a state of nature, worth 8 dollars per acre. I have examined that part of said land in controversy, in the possession of David Wood: said land would have rented the same as that of John Buchannon, for the like period; the fencing and clearing of said land is worth 20 dollars per acre; land, in a state of nature, is worth eight dollars per acre. I live

on a farm, and have followed farming; I have been an acting justice of the peace in this county; the house, kitchen, yard and garden of John Buchannon, would be worth from 24 to 30 dollars per year rent; the barn, stable and barn-yard on said farm, would be worth about 20 dollars per year rent; the annual rent of his orchard would be, on an average, one year with another, worth from 12 to 15 dollars per year. Andrew Buchannon's house, garden and yard, would rent for 20 dollars per year; his stable should rent for 12 or 15 dollars per year; the average rent of his orchard, one year with another, would be about 12 or 15 dollars. John Cammerer's house, garden and yard, worth about 25 dollars per year rent; his barn, I cannot what it is worth; orchard, worth 12 or 15 dollars; among the out-houses, included by me in my estimate of the barn on the farm of John Cammerer, is included two small log-houses, occupied each by a family, The annual rent of the house, garden and yard on the Fisher farm, would be 20 dollars per year; I cannot say what the barn and stable would be worth per year, but I suppose, 8 or 10 dollars per year; the cabin connected with the barn in my estimate thereof, is occupied by a family; the frame-house on said farm has been built within the last three years, I think; the old house by me valued at 50 dollars, on said farm, is an unoccupied house in a dilapidated condition; the young orchard on said farm is not, I believe, a bearing orchard; I know nothing of the quality of the fruit; the rent of the old orchard, one year with another, would be 10 or 12 dollars. The house, kitchen, yard and garden on the McWilliams farm, should rent for from 24 to 30 dollars per year; barn and stable, worth 15 dollars per year; orchard, worth 12 or 15 dollars per year. I know nothing of the quality of the fruit in any of the above orchards, except I have eat of the fruit of the orchards of John and Andrew Buchannon, and of the McWilliams farm. Within 50 or 60 yards from the house of John Buchannon, there is a spring, that yields plenty of water; 25 or 30 yards from the dwelling house on the McWilliams farm, there is a spring, appearing to yield plenty of water; there is a meadow of 15 or 20 acres on the farm of John Buchannon; on the McWilliams farm, there is some meadow, but cannot state how much; as to the other farms, except Wood's, I do not recollect of any meadow. From 1827 to the present time, the average price of corn at the heap, has been 25 cents per bushel; the average price of wheat, for the same period, has been about sixty-two cents per bushel; during said period, the common custom of the country has been to rent for grain rent; for said period, about 10 bushels of corn to the acre has been paid at the heap, on an average; when wheat is paid, it is usual to give one third, in the shock. In viewing the meadow of John Buchannon, there is about 7 or 8 acres instead of 15 or 20 acres.

SQUIRE FRAZEE.

Joseph Barkley, being duly sworn, states, that he has known the farm in possession of John Buchannon, since the year 1820; his brick dwelling-house and kitchen are worth at present, $1350; barn is worth three hundred dollars; the barn was built when I first knew the place, and would cost, in the year 1820, about four hundred dollars; orchard is worth 550 dollars; well is worth 58 dollars; spring-house worth 13 dollars; smoke-house, worth 18 dollars; a well for stock water, worth 15 dollars; the well at the house has been dug about 3 years; corn-crib and stable, 20 dollars; corn-house, 33 dollars; school-house, 90 dollars; to clear and fence said land, I view it to be worth, 23 dollars per acre. The nett annual rents of said farm, from 1829 to the present time, would be one dollar for all the cleared, tillable land; the tenant having the use of all buildings, and the orchard; tenant keeping up repairs; land, in a state of nature, is worth eight dollars and fifty cents per acre. I have known the farm of Andrew Buchannon, since the year 1820: his dwelling-house and kitchen are worth 650 dollars; orchard worth 350 dollars; frame stable worth 150 dollars; other out-buildings, 40 dollars; well for stock water is worth 15 dollars; clearing and fencing said farm per acre is worth $22 50 per acre. I have reference to the state it is now in; the nett rents would be the same as the land in possession of John Buchannon, for the like period; this land in a state of nature, worth eight dollars and fifty cents. To clear and fence the farm in possession of John Cammerer, in the manner it has been cleared and fenced, is worth $22 50; his brick dwelling-house is worth 1100 dollars, at present; barn is worth 150 dollars; one log stable and three log corn-cribs, worth 60 dollars; one log smoke-house, worth 18 dollars; one well, worth 58 dollars; milk-house, worth 15 dollars; one hewed log-house, (one story,) occupied by a family, worth 55 dollars; one log-cabin, smoke-house and stable, worth 30 dollars; one orchard, worth three hundred and seventy-five dollars; the nett annual average cash rent, for said farm, from 1829 to the present time, would be eighty-seven and a half cents per acre, for all the cleared tillable land, the tenant keeping up repairs, and having the use of all the buildings and orchard; the value of this farm, in a state of nature, would be seven dollars and fifty cents per acre. To clear and fence the farm lately occupied by David and John Fisher, as it now is, would be worth $22 50 per acre; the frame dwelling-house is now worth seven hundred and fifty dollars; the barn is worth 180 dollars; one frame meat-house, worth 18 dollars; one stable and corn-crib, worth 35 dollars; one young orchard, worth 100 dollars; one house, stable and spring-house, worth 46 dollars; the old orchard, worth 400 dollars; the nett annual average rents of this farm, from 1829 to the present time, would be eighty-one cents per acre; the tenant keeping up the repairs and occupying the buildings and orchard; this land, in a state of nature, is worth

7 dollars per acre. To fence and clear the McWilliams farm, as it now is, would be worth 22 dollars and fifty cents per acre; the brick dwelling-house is now worth 1200 dollars; the barn is worth 125 dollars; one stone milk-house, 30 dollars; two out-buildings, worth 25 dollars; one corn-crib and waggon shed, 20 dollars; stable, worth $140; one orchard is worth 475 dollars; the nett annual average rents of said farm from 1829 to the present time, would be 87 cents per acre, for the cleared tillable land; the tenant occupying the buildings and having the use of the orchard; repairs to be kept by the tenant; in a state of nature, this land is worth 8 dollars per acre. To clear and fence the farm in the possession of Samuel Buchannon, would be worth 23 dollars per acre; his dwelling-house and kitchen at present are worth 275 dollars; one frame barn, worth 450 dollars; one frame meat-house, 25 dollars; one milk house and corn-crib, worth 25 dollars; one well at the house, worth 50 dollars; orchard, worth 400 dollars; the nett annual average rents of this farm would be the same as the rents of the McWilliams farm for the like period; in a state of nature, this is worth eight dollars. To clear and fence that part of said tract, in possession of David Wood, is worth $22 50 per acre; rent would be the same as of the McWilliams farm; there is on this place a log cabin and shed, worth 25 dollars at present; in a state of nature, this land is worth six dollars and fifty cents per acre; I am a farmer by occupation.

JOSEPH BARKLEY.

(Attended 6 days.)

Thomas Wilson, being duly sworn, states, that he has been acquainted with the farm in possession of John Buchannon, since the year 1816; at that time there were between 40 and 50 acres of land cleared on his place; that the nett annual average rent of said farm from 1816 to 1829, would be eighty-seven cents per acre; the tenant having all the buildings and orchard, and keeping up the repairs; in 1829 he had about seventy-five acres of cleared land; and the nett annual average rent of said farm, from 1829 to the present time, would be one dollar per acre for all the cleared tillable land; the tenant keeping up all repairs, and having possession of all the buildings, and the use of the orchard; to fence and clear land, as this farm has been cleared and fenced, is worth 22 dollars per acre; I mean in its present condition; his brick dwelling-house was built in the year 1825, and cost about 1200 dollars; the kitchen was built some years after, but I cannot state when; the house and kitchen at present, are worth 1450 dollars; the barn at present, is worth three hundred and twenty-five dollars; cannot say when it was built; orchard, worth 400 dollars; spring-house, smoke-house and corn-crib, worth 70 dollars; well, worth 60 dollars; stock water well, worth 24 dollars; machine-house, worth 35 dollars; school-house, worth 100 dollars; this

land in a state of nature, worth seven dollars per acre. To clear and fence the land in possession of Andrew Buchannon, is worth 22 dollars per acre; the rents and profits the same as of John Buchannon; from 1816 to 1829, Andrew Buchannon had about 40 acres of cleared land; from 1829 to the present time, his cleared land would not exceed 75 acres; Andrew Buchannon's dwelling-house at present, worth 600 dollars; spring-house, smoke-house and cribs, 47 dollars; orchard, worth 475 dollars; one frame stable, worth one hundred and seventy-five dollars; stable has been built six or seven years, and cost about one hundred and seventy-five dollars; in a state of nature, land worth seven dollars. I have known the farm of John Cammerer, since the year 1816; at that time he had about 40 acres of cleared land; in 1829 he had 75 or 80 acres of cleared land; the nett annual rents of said farm, at an average from 1816 to 1829, would be seventy-five cents per acre, for all the clear tillable land; from 1829 to the present time, the nett average annual rent of said farm, would be eighty-seven cents per acre; the tenant to keep up repairs, and have the use of all buildings and the orchard; his house and kitchen at present worth 1000 dollars; said house, I think, was built in the year 1834, and cost, I suppose, about 1000; barn, at present worth 200 dollars; one cabin and stable, worth 35 dollars; one stable and three cribs, worth 30 dollars; one smoke-house and stone milk-house, worth 40 dollars; one small hewed log-house, worth 100 dollars; one well, worth 60 dollars; the orchard, 92 trees, 400 dollars; in a state of nature, six dollars per acre. To fence and clear the farm, called the Fisher farm, is worth 22 dollars per acre; in 1816 there were cleared on said farm, near sixty acres; in 1829 there were near eighty acres; the nett annual average rent of said farm from 1816 to 1829, would be fifty cents per acre; from 1829 to the present time, the nett average annual rent of said farm, would be about sixty-two and a half cents; the tenant having all the buildings and orchard; repairs to be kept up by the tenant; the frame dwelling-house on said farm, worth 650 dollars; one hewed log barn, worth 200 dollars; one stable and crib, 40 dollars; milk-house and smoke-house, worth 30 dollars; one orchard of small trees, 75 dollars; one hewed log-house, (one story,) and stable, worth 75 dollars; the old orchard, 500 dollars; in state of nature, land worth five dollars. To clear and fence the McWilliams farm, is worth 22 dollars per acre; in 1816 there were cleared on this place about thirty acres; in 1829, only about forty were cleared; the nett average annual rent of said farm, from 1816 to 1829, was about sixty-two and a half cents to the acre; from 1829 to the present time, eighty-seven and a half cents per acre, would be the nett average annual rent of said farm; the tenant keeping up repairs, and having the use of all buildings and orchard; the brick dwelling-house is now worth 1100 dollars; I think it cost that sum, if not more, to build it; hewed log-barn, worth 150 dollars; cost, I

believe, 300 dollars to build it; one out-building, 25 dollars; one crib and waggon-house, worth 25 dollars; one frame stable, worth 150 dollars; an apple orchard, worth 500 dollars; one stone spring-house, worth 30 dollars; in a state of nature, land worth 6 dollars per acre. The frame-house on the Fisher farm, I think, was built about five years ago. To clear and fence the farm in possession of Samuel Buchannon, would be worth 22 dollars per acre; in 1816 there were not to exceed 30 acres cleared on said farm, if that; 1829 there were about sixty acres cleared; the annual average rent of said farm from 1816 to 1829, would be 75 cents per acre, for all the cleared; the tenant keeping up repairs, and having the use of all buildings and orchard; from 1829 to the present time, the nett annual average rent would be 87 cents per acre; his dwelling-house and kitchen are at present worth 400 dollars; orchard, worth 500 dollars; the barn is worth 500 dollars; the barn has been built about two years, and cost about 500 dollars; spring-house and smoke-house, 45 dollars; well, worth 36 dollars; land in a state of nature, worth six dollars. To clear and fence the land in possession of David Wood, is worth 22 dollars per acre; cannot state when any part of said farm ; if cleared in 1816, the nett annual average of said land would be about 75 cents, up to 1829; from 1829 to the present time, the rents would be eighty-seven and a half cents per acre; the tenant keeping up all repairs; there is one log cabin and shed on said land, worth at present 35 dollars; this land in a state of nature, worth six dollars per acre. My occupation through life has mainly been that of a farmer; I have attended mill considerably; I have cleared a good deal of land; in 1818 about 50 acres were cleared; from 1818 to 1829, about 8 or 10 acres were cleared; the balance has been cleared since 1829. In 1818 Andrew Buchannon had about 30 acres cleared; in 1820, 35 acres were cleared; and not much more was cleared until after 1829; I cannot tell the periods after 1829, when the balance of the clearing was done. In 1818 John Cammerer had 40 acres cleared; in 1820 about 15 acres were added; about 5 or 6 acres in addition were cleared before 1829; by 1833, 5 or 6 acres more were cleared, and the rest was cleared afterwards; the clearing was done at different ; I cannot state the various times clearing was done; the cabin, S.W. from the dwelling of Mr. Cammerer, included in my estimate of improvements, is about 16 feet square; there is a shed to the house; a family resides in the house; near this cabin is a log stable; near the dwelling house is another small hewed log house, stone chimney; said house is occupied by a family; that house is also included in my valuation of improvements. In 1818, 60 acres were cleared on the Fisher farm; I cannot state the particular period, when the rest of said land was cleared; since 1829 about five or six acres were cleared on the farm occupied by Samuel Buchannon.

(Attended 6 days.) THOMAS WILSON.

Squire Frazee recalled, states: that if the buildings on the farms on which he has heretofore estimated the rents, were to be rented separate from said farms, the rents of the farms would be as much less as the estimated rents of the buildings. I have known no farms in the neighborhood to be rented, having on them as valuable buildings as have the farms in question. If the farm of John Cammerer were divided, throwing one of the small log dwellings upon each division, said farm might, or might not, rent at the rates I have estimated; but I do not think it would. When land, or a portion of a farm has been rented, having a cabin thereon, the land has rented at the rates I have before estimated. If the farms in question had on them log buildings, in the place of those now on them, I do not think said farms would rent at the rates I have estimated. When land has been rented as above stated, having a cabin thereon, it has been usual for the landlord to keep up repairs. When a farm is received in good repair, it would take about one-third of the rents to keep it in repair for thirteen years.

SQUIRE FRAZEE.

(Attended 6 days.)

Peter Fisher being duly sworn, states, he has known the farm occupied by John Buchannon since the year 1800. There were at that time something like nine acres cleared on the whole farm. There was as much as 15 acres cleared in 1810—up to that time. I do not know that there were any more cleared in 1820. Up to 1830, there were cleared on said farm between 40 and 50 acres; about 10 acres have been cleared since 1830.

I have known the farm occupied by Andrew Buchannon since the year 1800. 10 or 12 acres were at that time cleared. In the year following *year*, I think 10 acres more were cleared; from that time, until 1810, about 10 acres more were cleared. Cannot say whether any more was cleared prior to 1820. Witness cannot state the periods when said farm was cleared, any further than he has already stated. The stable on said farm, I think, has been built within five years.

I have known the farm of John Cammerer since the year 1800. At that time there were between 7 and 10 acres cleared. Cannot state when his other land was cleared. The most of said farm has been cleared since the year 1820, I believe. In the year 1816 or '17, I cleared for said Cammerer 10 or 12 acres. His dwelling-house has been built within the last ten years.

I have known the Fisher farm since the year 1800. In that year, or the year before, we cleared 10 or 15 acres. For three or four years following, about 10 acres were added each year to the improvement. By the year 1810, I think about 70 acres *was* cleared; at least, that much was under fence. I do not recollect of any more being until a few years ago; since 1829 from three to five acres were cleared. The frame dwelling-house has been built

within four or five years last past. The barn was built two years where it now stands; it is a hewed log barn; it was built in the first place in the year 1802, about 100 rods from its present situation; it was thrown down and moved to its present site; it was rebuilt all new, except the logs; cannot state what it cost when first built. The old house, now in a dilapidated condition, was built one or two years before the barn. There is a small piece of three or four acres, cleared one or two years ago.

From 1800 to 1810, there were cleared, of the McWilliams' place, 30 or 40 acres; since that time, up to 1820, about 10 acres more were added. There had not been more than two or three acres added since; and previous to the year 1830, six or seven acres were added to said farm—three or four years ago. The barn was built 27 or 30 years, and cost between two and three hundred dollars.

On the farm now occupied by Samuel Buchannon, there were, in 1810, 20 or 30 acres cleared. Cannot state when any of the buildings were put, nor when any of the farm was cleared, than as above stated.

The barn on the land of John Buchannon was built before the brick dwelling-house. The nine acres cleared in 1800, on the farm of John Buchannon, was cleared before John Buchannon occupied or owned said farm, by men of the name of Ford and Dixon. John Buchannon came on to said farm between three and five years after the year 1800. Some of the land on the above farms was cleared smooth at the first; some was cleared a foot and under. The most of it was cleared in the latter way. Does not know whether any of John Buchannon's was cleared smooth. Cannot say whether any was cleared smooth on the farms of Andrew Buchannon and John Cammerer. Between three and four acres on the Fisher farm was cleared smooth, for an orchard. Two acres on the McWilliams farm was cleared smooth. I cannot say how much was cleared smooth on the farm of Samuel Buchannon. The balance of the land on each farm has been brought to its present state of improvement, by the annual clearing of it up, except one field I cut down for Mr. Cammerer, of about 10 acres, which, after standing some years, I cut down the whole of the timber. Each of the respective farms have had meadows thereon, but I cannot state how much, nor how long they stood as meadows.

PETER FISHER.

Jacob Fee being duly sworn, states, that I have known the farm occupied by John Buchannon since the year 1820. His brick dwelling-house was built between 1824 and 1826. Barn was built before the house. The dwelling-house is at present worth 1,300 dollars, including the kitchen; the barn, worth 300 dollars; school-house, worth 100 dollars; machine house, worth 35 dollars; other out-buildings, worth 50 dollars. The machine house is of hewed

logs, shingle roof; used formerly for a carding machine. School-house, 20 by 22 feet, built of hewed logs and weather boarded, shingle roof. Well, at the house, worth 35 dollars. Stock water well, worth 15 dollars. Orchard, worth 500 dollars. To clear and fence said farm, is worth 22 dollars per acre. From 1823 to 1829, said farm would have rented for 75 cents per acre, nett rent; the tenant keeping up repairs, and having the use of all buildings and orchards.

I have known the farm of Andrew Buchannon for the same period. To clear and fence said farm is worth 22 dollars per acre. Dwelling house and kitchen, worth 500 dollars. Frame stable, worth 225 dollars. Other out-buildings, worth 25 dollars. The stable has been built within eight years, and cost, when built, about 225 dollars; one orchard, worth 250 dollars. The rents of this farm the same as of John Buchannon.

I have known the Fisher farm for the same period. To clear and fence said land would be worth 22 dollars per acre. One frame dwelling-house and said farm, worth 700 dollars; has been built within six years past; cost that sum to build it. A hewed log barn, worth 150 dollars. Other out-buildings, worth 50 dollars. Small log house, occupied by a family, and a stable, worth 50 dollars together. Small orchard, is worth 50 dollars; the large orchard is worth $450. From 1823 to 1829, the average annual rent of said farm would be sixty-two cents per acre, nett rent; the tenant keeping up repairs and having possession of all the buildings and orchard. The nett annual average rent of said farm, from 1829 to the present time, would be 81 cents per acre. The nett average annual rent of the farm occupied by John Buchannon, would be one dollar per acre, from 1829 to the present time. I have known the McWilliams farm for the same period; to clear and fence said farm, is worth 22 dollars per acre; the brick dwelling house is worth 1,300 dollars; one log barn, worth $150; frame stable, worth $150; spring house and old log house, 50 dollars; orchard worth $500; rent, the same as the Fisher farm. I have known the farm occupied by Samuel Buchannon, for the same period; to clear and fence said farm, would be worth now 22 dollars per acre; dwelling house and kitchen worth, at present, $350; frame smoke house, worth 20 dollars; one frame barn, worth 400 dollars; one well, 10 dollars; one spring house, worth 10 dollars; one orchard, worth 500 dollars; rents, the same as of the farm of John Buchannon; the barn on said farm has been built within six years last past.

JACOB FEE.

Jacob Fee recalled, states: a field on the farm of John Buchannon, lying in the fork of the road, was cleared, I believe, in the year 1829; some of the wood cut off of said field, was hauled to the house for fire, and about fifty cords, I think, was hauled to Moscow as cord wood,—this is my impression; there was a good

deal of timber left standing on the ground, which has been cut down since. I am a farmer by occupation; I have cleared land, built log buildings, and built a brick house.

JACOB FEE.

(Attended 5 days.)

Wednesday, Nov. 18th, 1840.

Henry Cammerer, being duly sworn, states, that he has known the farm in possession of John Cammerer since about the year 1810; at that time, I would say he had about 20 or 25 acres of land cleared; it was cleared in the common way, and made fit for the plough; it was worth from 15 to 18 dollars to fence and clear it in the manner it was then fenced and cleared; between 1810 and 1820, about 20 or 25 acres of cleared land was added to his improvement; cannot say how it was cleared; the custom was, to clear a foot and under; I cannot state how much has been cleared since 1820; there has been some added; the barn on said farm was built about the time I first knew said farm,—I would say thirty-one or thirty-two years ago,—at which time there was the quantity cleared I have mentioned; said barn, when first built, was worth about two hundred and fifty dollars,—it is now worth one hundred and thirty or forty dollars; his orchard was set out about 20 years ago; to set out an orchard of 100 trees, would be worth 25 cents a tree; when young trees, lately set out, are found to be growing, they are worth 50 cents per tree; I would not have them pulled up for 50 cents; I would give a dollar sooner than have them pulled up; I would not like to have them pulled up at all; I do not know whether the trees first set out have died, and had to be replaced with others; I am the uncle of John Cammerer; Jacob Fee, whose testimony has been taken in this cause, is the son-in-law of John Cammerer;—and further, saith not.

HENRY CAMMERER.

Henry Cammerer, Jr., being duly sworn, states, that the barn on the farm in possession of John Buchannon, was built about 18 years ago, and was worth, when built, between three and four hundred dollars; his orchard was a bearing orchard twenty years ago; I cannot state when it was set out; the school house on said farm was built twenty years ago; I cannot state who built the school house,—whether by the neighborhood or by John Buchannon. The dwelling house on the farm of Andrew Buchannon was built 20 years ago this fall, and was worth, when built, 200 dollars; the kitchen was built some five or six years after the house was built, and was worth, at the time it was built, one hundred and fifty dollars; I do not know whether the kitchen is finished; the orchard was bearing when I came to this State; trees were pretty large, 20 years ago; the stable on said farm was finished about two years ago,—it had been raised a year or two before,—when finished, it

was worth 200 dollars; I cannot state the size of the kitchen,—it is a frame, one story and a half; the frame stable on the McWilliams farm was built, I think, 15 or 16 years ago, and was worth one hundred and thirty or forty dollars; the barn on the farm of Samuel Buchannon was built about four years ago, and was worth, when built, in my opinion, about four hundred dollars; I am a cousin of John Cammerer, one of the complainants; I think the orchard on the McWilliams farm was beginning to bear fruit 20 years ago; the orchard on the Fisher farm was bearing fruit at that time; the trees were large; I should think said orchards were worth as much 20 years ago as they are now,—that would, in my opinion, be five dollars for each tree; the orchard on the farm of Samuel Buchannon was also bearing fruit when I first came to this State; the dwelling house he now occupies, at that time had the appearance of an old house, as if it might have been built 15 years before that time; an apple tree worth five dollars, would be worth three dollars per year; a good, large tree, such as would be worth five dollars, would bear about fifteen bushels of apples;—and further, saith not.

HENRY CAMMERER.

Exhibit A.

It is hereby certified by me, the undersigned, County Surveyor, for and within the County of Clermont and State of Ohio, that, by actual surveys made by me, there is the quantity of improved land in the farms below named, lying and being within Beverly Roy's survey, No. 1064, and on the 700 acre tract, claimed by Edwin Upshaw, within said survey, in said county of Clermont, on the waters of Indian Creek, to wit:

		A.	*P.*
On the Farm of	John Buchannon,	83	120
	Andrew Buchannon,	68	53
	Samuel Buchannon,	68	27
	David Woods,	25½	acres.
	John Cammerer,	112	22
	Adam Fisher's farm,	98	47
	John WcWilliams,	65	45
	Whole amount,	521	74

In making the above surveys, the same was done including all fences and public highways,—which said highways *is* supposed to contain, on John Buchannon's farm, about 3 or 3½ acres; on Andrew Buchannon's, about 2 or 2½ acres; on Samuel Buchannon's, about 3 or 3½ acres; and on the McWilliams farm, about 2 or 2½ acres.

SQUIRE FRAZEE, *S. C. C. O.*

June 19th, 1840.

The out-boundaries of the annexed diagram contain the quantity of land within Beverly Roy's survey, No. 1064, in Clermont County, Ohio, to wit: 1185¾ acres; and the courses and distances of the lines of said survey are as laid down on the same out-boundary lines.

The several tracts within the diagram, are each, as it relates to quantity, length of lines, and their course, quantity of land cleared on each, and the corners of each, as represented on the diagram.

Surveyed and certified by me, Surveyor for and within the county of Clermont and State of Ohio.

SQUIRE FRAZEE, *S. C. C. O.*

Novr. 13th, 1840.

[Here follows Diagram.]

A.

Years.	1804	1805	1806	1807	1808	1809	1810	1811	1812	1813	1814	1815	1816	1817	1818
Cleard Land each year,	9*	11	12	14	16	18	20	22	24	25	26	27	28	29	30
	$ ct.	$ ct.	$ ct.	$ ct.	$ ct.	$ ct.	$ ct.	$ ct.	$ ct.	$ ct.	$ ct.	$ ct.	$ ct.	$ ct.	$ ct.
Yearly Rent per acre,	1 12	1 12	1 12	1 12	1 12	1 12	1 12	1 12	1 12	1 12	1 12	1 12	1 12	1 12	1 12
Gross Rent each year,	10 08	12 32	13 44	15 68	17 92	20 16	22 40	24 64	26 88	28 00	29 12	30 24	31 36	32 48	33 60
Gross Int'st each year,	9 07	10 34	10 48	12 89	11 82	12 09	12 09	11 82	11 28	10 08	8 73	7 21	5 64	3 89	2 01
Price of Clearing per acre,	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60
Gross Price for Clearing,		29 20	14 60	29 20	29 20	29 20	29 20	29 20	29 20	14 60	14 60	14 60	14 60	14 60	14 60
Gross Int. for Clearing,		21 02	11 38	21 02	19 27	17 50	15 76	14 01	12 26	5 25	4 38	3 50	2 62	1 75	87

Am't of Rent to 1818 inclusive, $348 32; Int., $139 24; Clearing, $306 60; Int., $151 59.

Years.	1819	1820	1821	1822	1823	1824	1825	1826	1827	1828		
Cleared Land each year,	32	36	40	42	45	46	47	48	50	52		
	$ ct.	$ ct.	$ ct.	$ ct.	$ ct.	$ ct.	$ ct.	$ ct.	$ ct.	$ ct.		
Yearly Rent per acre,	1 42	1 42	1 42	1 42	1 42	1 42	1 42	1 42	1 42	1 42		
Gross Rent each year,	45 44	51 12	56 80	59 64	63 90	65 32	66 74	68 16	71 00	73 84	Am't Rent to 1828 inclusive,	$621 96
Gross Int'st each year,	27 27	27 60	27 26	25 74	23 00	19 59	16 01	12 26	8 52	4 43	Int. – –	$188 56
Price of Clearing per acre,	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60		
Gross Price for Clearing,	29 20	58 40	58 40	29 20	43 80	14 60	14 60	14 60	29 20	29 20	Clearing – –	$321 20
Gross Int. for Clearing,	17 52	31 53	28 03	12 26	13 76	4 38	3 50	2 62	3 50	1 75	Int. – –	$119 95

Years.	1829	1330	1831	1832	1833	1834	1835	1836	1837	1838	1839	1840		
Cleared Land each year,	55	57	59	63	66	68	70	73	76	78	80	83		
	$ ct.	$ ct.	$ ct.	$ ct.	$ ct.	$ ct.	$ ct.	$ ct.	$ ct.	$ ct.	$ ct.	$ ct.		
Yearly Rent per acre,	2 00	2 00	2 00	2 00	2 00	2 00	2 00	2 00	2 00	2 00	2 00	2 00	Amount of Rent to	
Gross Rent each year,	110 00	114 00	118 00	126 00	132 00	136 00	140 00	146 00	152 00	156 00	160 00	166 00	1840 inclusive,	$1656 00
Gross Int'st each year,	79 70	75 24	70 80	68 04	63 36	57 12	50 40	43 80	36 48	28 08	19 20			572 10
Price of Clearing per acre,	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60		
Gross Price for Clearing,	43 80	29 20	29 20	58 40	43 80	29 20	29 20	43 80	43 80	29 20	29 20	43 80		$452 60
Gross Int. for Clearing,	31 53	19 27	17 50	35 04	21 02	12 26	10 51	13 14	10 51	5 25	3 50			179 53

* *Note.*—The first 9 acres were not cleared by John Buchannon. See Depositions.

A.—Continued.

	John Buchannon, Dr.			Contra,	Cr.
	No. 1.			No. 1.	
1818.	To am't of Rent from 1804 to 1818,	$348 32	1818.	By clearing and fencing 21 acres of land at $14 60 per acre,	$306 60
	" Int. on same to that date,	137 24		" Int. on same to that date,	151 39
		$485 56	1816.	" Setting out 100 apple trees, 25 cts. each,	25 00
	Balance due for Improvements made prior to 1819	43		" Int. on same to 1818 inclusive,	3 00
		$485 99			$485 99
	No. 2.			No. 2.	
1829.	To am't of rent from 1818	$621 96	1829.	By balance due as above,	43
	" Int. on same,	188 56		" Int. on same to 1829,	25
	" Rent of Orchard at $20 per acre, from 1820 to 1828 inclusive,	180 00		" Clearing and fencing 22 acres of land, at $14 60 per acre,	$321 20
	" Int. on same,	54 00		" Int. on same to 1829,	119 95
	" Rent for house, barn, &c. from 1825 to 1828 at $50 per year,	200 00		" Barn, at its present value, frame,	240 00
	" Int. on same,	30 00	1822.	" Int. on same to 1829,	86 40
		$1,274 52	1825.	" Dwelling house of brick,	1,014 00
	Balance for Improvements,	696 23		" Int. on same to 1829,	188 52
		$1,970 75			$1,970 75
	No. 3.			No. 3.	
1840.	To am't of rent from 1828	$1,656 00	1840.	By balance	$696 23
	" Int. on same	572 10		" Int. on same	501 28
	" Rent of orchard, at $20 per acre, same time	240 00		" Clearing and fencing 31 acres of land, at $14 60 per acre,	452 60
	" Int. on same	91 80		" Interest on same	179 53
	" House, barn, &c., at $50 per an.	600 00		" Kitchen	167 00
	" Interest on the same	231 00		" Int. on same	100 00
				" 2 Wells	53 00
				" Spring-house	11 00
					$2,160 64
				Bal. due for rents and profits	1,230 26
		$3,390 90			$3,390 90
	To balance as reported	$1,230 26			
	By amount of tax and int. as reported by former com'r	241 40			
	Balance due def't Upshaw for nett rents and profits	$988 86			

Note.—The value of the orchard at present, over and above the original cost, produced by the natural growth of the trees, – – – – $315 00

The present value of the cleared land, over and above the original cost, produced by the natural decay and annual clearing up of timber, at $20 per acre, 448 20

$763 20

Dec'r 8th, 1840. THOMAS H. LINCH.

A.—Continued.

House.			Barn.			Orchard.				Kitchen.		2 Wells.	
Date.	Value then.	Value now.	Date.	Value then.	Value now.	Date.	No. Trees	Value then.	Value now.	Date.	Value now.	Date.	Value.
1825.	$1,200	$1,014	1822.	$375	$240	1816.	100.	25 each.	$340	1830.	$167		$53

Spring-house.		Machine-house.			Clearing and Fencing.					
Date.	Value.	Date.	Value then.	Value now.	Date.	Cost pr. acre.	No. of acres.	Total cost.	Present value per acre.	Total present value.
	$11			$45	before 1819.	$14 60	30	$438	$20	$600

Clearing and Fencing.						Clearing and Fencing.						School-house, &c.		
Date.	Cost per acre.	No. of acres.	Total cost.	Present value per acre.	Total present value.	Date.	Cost per acre.	No. of acres.	Total cost.	Present value per acre.	Total present value.	Date.	Then.	Now.
before 1829.	$14 60	22	$321 20	$20	$442	since 1829.	$14 60	31	$452	$20	$620	1820.		$115

A.—Continued.

JOHN BUCHANNON, DR.			CONTRA,		
	No. 4.			No. 4.	
1840.	To rent of 83 acres of land from 1819 to this date, both years inclusive,	$2,277 96	1818.	By clearing and fencing 21 acres of land up to this date, at $14 60,	$306 60
	Per contra	331 60		" Setting 100 apple-trees, 1816, at 25 cts. per tree,	25 00
	Balance due Upshaw	$1,946 36		" Value of improved land, above mentioned, produced by natural decay of timber, as before mentioned,	$162 00
	Per contra	477 00		" Value of orchard, produced by natural growth of trees, as before,	315 00
	Balance due def't Upshaw	$1,469 36			$477 00
	To rent of orchard from 1820 to this date, at $20 per annum,	800 00			
	Bal. due def't, E. Upshaw,	$2,269 36			
	No. 5.			No. 5.	
1840.	To rent of 83 acres of land from 1829 to this date, both inclusive,	$1,656 00	1828.	By clearing and fencing 52 acres of land up to this date, at $14 60,	$627 80
	" Rent of house and barn same time	600 00		" Setting 100 apple-trees, at 25 cts. each,	25 00
	" Rent of house and orchard same time	240 00		" Frame Barn	240 00
		$2,496 00		" Brick House	1,014 00
	Per Contra	1,906 80			$1,906 80
	Bal. due def't, Upshaw	$589 20		Increased value of orchard and cleared, as above	$595 80
				Per debit	589 20
				Bal. due comp't, Buchannon	$6 60
	No. 6.			No. 6.	
1840.	To rent of land from 1819 to this date, inclusive,	$2,277 96	1840.	By clearing and fencing 30 acres of land in its present situation, at $20,	$600 00
	" Int. on same	760 66		" Orchard, at its present value,	340 00
		$3,038 62		" Am't of tax and int., as before reported,	241 40
	Per Contra	1,181 40			$1,181 40
	Bal. due Upshaw	$1,857 22			

A.—Continued.

JOHN BUCHANNON, DR.			CONTRA,		CR.
	No. 7.			No. 7.	
1840.	To rent from 1829 to this date, inclusive,	$1,656 00	1840.	By clearing and fencing 52 acres of land as it now is	$1,040 00
	" Int. thereon	572 10		" Orchard at its present value	340 00
	" Rent of orchard same time	240 00		" House	1,014 00
	" Int. on same	91 80		" Am't of tax and int.	241 40
		$2,559 90		" Barn	240 00
	Rent of house, &c., for same time	$600 00			$2,875 40
	Per contra	315 50		Per debit	2,559 90
	Balance due def't, Upshaw	$285 50		Balance due comp't Buchannon	$315 50
	No. 8.			No. 8.	
1818.	To am't of rent from 1804 to 1818 - - -	$348 32	1818.	By clearing 21 acres of land, at $14 60 per acre	$306 60
	" Int. on same to that date	137 24		" Int. on same - -	151 39
		$485 56	1816.	Setting out 100 apple trees, 25 cts. each - -	25 00
	Bal. due J. Buchannon for improvements made prior to 1819 - - -	43		" Int. on same - -	3 00
		$485 99			$485 99
	No. 9.			No. 9.	
1829.	To am't of rent from 1818 to 1829 - - -	$621 96	1829.	By balance due as above	43
	" Int. on same - -	188 56		" Int. on same - -	25
		$810 52		" Clearing and fencing 22 acres at $14 60 -	321 20
	Balance due J. Buchannon for improvements -	1,497 31		" Int. on same - -	119 95
			1825.	" Brick dwelling house, cost value - -	1,200 00
				" Int. on same to 1829 -	216 00
			1822.	" Barn, frame, cost value	375 00
				" Int. on same - -	75 00
		$2,307 83			$2,307 83

A.—Continued.

JOHN BUCHANNON, DR.			CONTRA,		
	No. 10.			No. 10.	
1840.	To am't of rent from 1829 to this date, inclusive,	$1,656 00	1840.	By balance due, as above,	$1,497 31
	" Int. on same	572 10		" Int. on same to this date	1,077 96
		$2,228 10		" Clearing 31 acres of land, $14 60	452 60
				" Int. on same	179 58
			1830.	" Kitchen	167 00
				" Int. on same to date	90 00
				" 2 Wells	58 00
				" Spring-house	11 00
				" Increased value of orchard	315 00
				" Increased value of improved land, on and above original cost,	448 20
	Balance due J. Buchannon, for improvements,	2,313 90		" Am't of tax and int. as per report	241 40
		$4,542 00			$4,542 00
	No. 11.			No. 11.	
1840.	To am'nt of rent for 23 acres of land, from 1829 to this date inclusive -	$1,656 00	1829.	By clearing 52 acres of land, at $14 60 per acre	$627 80
	Int. on same - - -	572 10		" Int. on same - -	271 34
		$2,228 10	1822.	" Barn - - -	375 00
				" Int. on same 6 years -	75 00
	Balance due to complt., J. Buchannon, for improvements - -	1,648 64	1825.	" Brick dwelling-house	1,200 00
				" Int. on same to 1829, 3 years - - -	216 00
			1816.	" Setting 100 apple trees, 25 cts. each - -	25 00
				" Int. thereon to 1828, inclusive - - -	18 00
				" Increased value of orchard produced by natural growth of trees	315 00
				" Increased value of improved land, as before stated - - -	448 20
				" Two wells - -	53 00
				" Spring house - -	11 00
				" Am't of tax and int. as reported by former commissioner -	241 40
		$3,876 74			$3,876 74

December 8th, 1840. THOMAS H. LINCH.

B.

House.			Barn.			Orchard.				Well.		Kitchen.		Smoke-house.	
Date.	Value then.	Value now.	Date.	Value then.	Value now.	Date.	No. of Trees.	Value then per tree.	Total value now.	Date.	Value.	Date.	Value.	Date.	Value.
1820.	$200	$200	1836.	$200	$150	1816.	80	25 cts.	$280		$15	1825.	$150		$50

Clearing and Fencing.						Clearing and Fencing.						Clearing and Fencing.					
Date.	Cost per acre.	No. of acres.	Total cost.	Present value per acre.	Total present value.	Date.	Cost per acre.	No. of acres.	Total cost.	Present value pr. acre.	Total present value.	Date.	Cost per acre.	No. of acres.	Present value pr. acre.	Total present value.	Total cost.
before 1819.	$14 60	28	$408 80	$20	$560	before 1830.	$14 60	11	$160 60	$20	$220	before 1840.	$14 60	27	$20	$540	394 20

B.—Continued.

ANDREW BUCHANNON,		DR.		CONTRA,		CR.
	No. 1.			No. 1.		
1818.	To am't of rent from 1800 to present time on 28 acres of land - -	$404 32	1818.	By clearing and fencing 28 acres of land, at $14 60		$408 80
	" Int. on same - -	179 76		" Int. on same - -		292 02
		$584 08		" Planting 80 apple trees at 25 cts. per tree -		20 00
	Balance - - -	139 14		" Int. on same to this date		2 40
		$723 22				$723 22
	No. 2.			No. 2.		
1829.	To am'nt of rent for 39 acres of land to this date from 1818 -	$511 72	1829.	By balance due - -		$139 14
	" Int. on same - -	163 31		" Int. on same to this date		83 48
	" Rent of house from 1820, 8 years, at $38	304 00	1820.	" House, hewed log -		200 00
	" Int. on same - -	82 08		" Int. on same - -		96 00
	" Rent of orchard from 1820 to this date, inclusive, at $16 per year - - -	144 00		" Clearing and fencing 11 acres, at $14 60 per acre - -		160 60
	" Int. on same - -	42 22		" Int. on same - -		76 20
			1825.	" Frame kitchen -		150 00
				" Int. on same - -		27 00
		$1,247 33				$932 42
				Balance - - -		314 91
						$1,247 33
	No. 3.			No. 3.		
1840.	To balance due - -	$314 91	1840.	By clearing and fencing 27 acres of ground, at $14 60 per acre -		$394 20
	" Int. on same to this date	226 72		" Int. on same - -		150 09
1829.	" Am'nt of rent on 66 acres land from this date - - -	1,143 00	1836.	" Barn, at present value		150 00
	" Int. on same - -	400 00		" Int on same - -		36 00
	" Rent of house at $38	456 66		" Well - - -		15 00
	" Int. on same - -	104 88		" Smoke-house - -		50 00
	" Rent of orchard at $16 same date - -	192 00				$795 29
	" Int. on same - -	47 98		Balance - - -		2,159 15
1836.	" Rent of stable 4 years, at $15 per year -	60 00				
		$2,955 15		*Note.*—The present value of the cleared land, over and above the cost produced by the natural decay of timber, and the annual clearing it up, at $20 per acre, - -		$2,955 15
	To am't of bal. as reported	$2,159 86				$356 40
	By am't of taxes as reported by former commissioner - - -	153 48		The present value of the orchard, over and above the original cost, produced by the natural growth of the trees, -		260 00
	Balance due deft. Upshaw	$2,006 38				$616 40

December 8th, 1840. THOMAS H. LINCH.

B.—Continued.

Years	1800	1801	1802	1803	1804	1805	1806	1807	1808	1809	1810	1811	1812	1813
Cleared land each year	10	11	12	13	14	15	16	17	18	19	20	21	22	23
Yearly rent per acre	$ 1 12	$ 1 12	$ 1 12	$ 1 12	$ 1 12	$ 1 12	$ 1 12	$ 1 12	$ 1 12	$ 1 12	$ 1 12	$ 1 12	$ 1 12	$ 1 12
Gross rent each year	11 20	12 32	13 44	14 56	15 68	16 80	17 92	19 04	20 16	21 28	22 40	23 52	24 64	25 76
Gross interest each year	12 09	12 56	12 90	13 10	13 17	13 10	12 90	12 56	12 09	11 49	10 75	9 87	8 87	7 72
Price of clearing per acre	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60
Gross price for clearing	146 00	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60
Gross int. for clearing	157 66	14 89	14 01	13 14	12 27	11 40	10 53	9 66	8 79	7 92	7 05	6 18	5 31	4 44

Years	1814	1815	1816	1817	1818	1819	1820	1821	1822	1823	1824	1825	1826	1827
Cleared land each year	24	25	26	27	28	30	35	36	37	37	38	38	38	38
Yearly rent per acre	$ 1 12	$ 1 12	$ 1 12	$ 1 12	$ 1 12	$ 1 42	$ 1 42	$ 1 42	$ 1 42	$ 1 42	$ 1 42	$ 1 42	$ 1 42	$ 1 42
Gross rent each year	26 88	28 00	29 12	30 24	31 36	42 60	49 70	50 12	51 54	51 54	52 96	52 96	52 96	52 96
Gross int. each year	6 45	5 04	3 49	1 81		25 56	26 83	24 05	21 63	18 54	15 88	12 71	9 54	6 37
Price of clearing per acre	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60
Gross price for clearing	14 60	14 60	14 60	14 60	14 60	29 20	73 00	14 60	14 60		14 60			
Gross int. for clearing	3 57	2 60	1 73	0 87		17 52	39 42	7 00	6 13		5 26			

Clearing, $408 80; Interest, $292 02;—Amount of rent to 1818 inclusive, $404 32; Interest, $179 76.

Years	1828		1829	1830	1831	1832	1833	1834	1835	1836	1837	1838	1839	1840
Cleared land each year	39		40	43	45	46	48	50	53	56	58	61	64	66
Yearly rent per acre	$ 1 42	$	$ 2 00	$ 2 00	$ 2 00	$ 2 00	$ 2 00	$ 2 00	$ 2 00	$ 2 00	$ 2 00	$ 2 00	$ 2 00	$ 2 00
Gross rent each year	52 96		80 00	86 00	90 00	92 00	96 00	100 00	106 00	112 00	116 00	121 00	128 00	132 00
Gross int. each year	2 60		57 60	56 76	54 00	49 68	46 08	42 00	38 16	33 60	27 84	21 78	15 36	
Price of clearing per acre	14 60		14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60
Gross price for clearing	14 60	160 60	14 60	43 80	29 20	14 60	29 20	29 20	43 80	43 80	29 20	43 80	43 80	29 20
Gross int. for clearing	87	76 20	10 51	28 90	17 52	7 87	14 01	12 26	15 76	13 14	7 00	7 86	5 26	

Amount of rent to 1828 inclusive, $511 72; Interest, 163 31. Clearing, $374 20; Interest, $150 09; Rent, $1,143 00; Int. $400 66.

B.—Continued.

ANDREW BUCHANNON,	DR.		CONTRA,	CR.
No. 4.			No. 4.	
1840. To rent of 66 acres to this date, from 1819 -	$1,654 72	1818.	By clearing, &c., 28 acres at $14 60 - -	$408 80
" Rent of orchard to this date - - -	336 00	1816.	" Setting 80 apple trees, at 25 cts. - -	20 00
	$1,990 72			$428 80
Per contra - - -	428 80		By increase value land -	151 20
			" Increase value orchard	260 00
Bal. due deft., Upshaw, -	$1,561 92			
Per contra - - -	411 20			$411 20
	$1,150 72			
No. 5.			No. 5.	
1840. To rent of 66 acres of land to this date from 1829	$1,143 00	1828.	By clearing 39 acres, at $14 60 - - -	$569 40
" Rent of orchard same time - - - -	192 00	1816.	" Setting 80 apple trees	20 00
" Rent of house, &c. -	456 00	1820.	" House - - - -	200 00
	$1,791 00			$789 40
Per contra - -	789 00			
Bal. due deft., Upshaw, -	$1,002 00		By increased value of cleared land and orchard - - -	411 20
Per contra - -	411 20			
Bal. due deft., Upshaw,	$570 80			
No. 6.			No. 6.	
1840. To rent of land from 1819	$1,654 72	1818.	By clearing 28 acres, at $20 - - - -	$560 00
" Int. on same - -	563 97		" Orchard, present value	280 00
" Rent of orchard -	336 00		" Taxes and interest -	153 48
" Int. on same - -	89 98			
	$2,644 67			$993 48
Per contra - -	993 48			
	$1,651 19			
No. 7.			No. 7.	
1840. To rent of land from 1829	$1,143 00	1840.	By clearing 39 acres, at $20 - - - -	$780 00
" Int. thereon - -	400 66		" House, at its value -	200 00
" Rent of orchard -	192 00		" Orchard, at its present value - - -	280 00
" Int. thereon - -	47 98			
" Rent of house - -	456 00		" Am'nt of tax and interest - - -	153 48
" Int. on same - -	104 88			
" Rent of farm & stable	60 00			
" Int. on same - -	9 00			
	$2,413 52			
Per contra - -	1,413 48			$1,413 48
Balance due Upshaw -	$1,004 04			

B.—Continued.

Andrew Buchannon, Dr.				Contra,	Cr.
	No. 8.			No. 8.	
1818.	To rent from 1800 to this date, on 28 acres of land,	$404 32	1818.	By clearing and fencing 28 acres of land, at $14 60,	$408 80
	" Interest on same	179 76		" Int. on same	292 02
		$584 08	1816.	" Planting 80 apple trees 25 cts.	20 00
	Bal. due A. Buchannon	139 14		" Int. on same	2 40
		$723 22			$723 22
	No. 9.			No. 9.	
1829.	To am't of rents for 39 acres from 1818 to this date	$511 72	1829.	By balance due	$139 14
	" Int. on same	163 31		" Int. on same to this date	83 48
		$675 03	1820.	" House, hewed log	200 00
	Balance due Buchannon for improvements	257 39		" Int. on same	96 00
				" Clearing and fencing 11 a's, at $14 60 per acre,	160 60
				" Int. on same	76 20
			1825.	" Frame Kitchen	150 00
				" Int. on same	27 00
		$932 42			$932 42
	N. 10.			No. 10.	
1840.	To am't of rent on 66 acres of land from 1829 to this date	$1,143 00	1840.	By balance due	$257 39
	" Int. on same	400 66		" Int. on same	185 28
			1836.	" Barn	200 00
				" Int. on same	48 00
				" Well	15 00
				" Smoke-house	50 00
				" Increased value of cleared land, as before stated	356 40
				" Increased value of orchard	260 00
				" Tax and int. as reported	153 48
		$1,543 66			$1,525 55
	To Balance due Upshaw	$18 11		Bal. due Upshaw	18 11
					$1,543 66

B.—Continued.

ANDREW BUCHANNON, DR.			CONTRA,		CR.
	No. 11.			No. 11.	
1840.	To am't of rent on 66 acres of land from 1829 to this date, inclusive,	$1,143 00	1829.	By clearing, &c., 39 acres, at $14 60,	$569 40
	" Int. on same	400 66	1816.	" Planting 80 apple trees 25 cts. each	20 00
		$1,543 66	1820.	" Int. on same to 1829	14 40
				" Hewed log house	200 00
	Bal. due A. Buchannon for improvements	368 02		" Int. on same to 1840, inclusive,	96 00
			1825.	" Frame kitchen	150 00
				" Int. on same	27 00
				" Well	15 00
				" Smoke-house	50 00
				" Increased value of cleared land, as before stated,	356 40
				" Increased value of orchard	260 00
				" Tax and int., as reported	153 48
		$1,911 68			$1,911 68

Dec'r 8th, 1840.

THOMAS H. LINCH.

C.

House.			Barn.			Orchard.				Kitchen.	Well.		Hewed Log-House.			Smoke house, old Stable &c.
Date.	Value then.	Value now.	Date.	Value then.	Value now.	Date.	No. of trees.	Value then pr. tree	Total value now.	Built and valued with house.	Date.	Value.	Date.	Cost.	Value now.	Date of improvements not known; all valued together.
1834.	$1,150	$845	1809.	$250	$130	1820.	92	25 cts.	$250		none.	$40	none.		$75	$68

Log-cabin, Stable, and Smoke-house.			Clearing and Fencing.					Clearing and Fencing.					Clearing and Fencing.				
Date.	Cost.	Present value.	Date.	No. of acres.	Cost.	Present value pr. acre.	Total present value.	Date.	No. acres.	Cost per acre.	Present value pr. acre.	Total present value.	Date.	No. acres.	Cost per acre.	Present value pr. acre.	Total present value.
none.	none.	$30	1818.	40	$14 60	$20	$800	1828.	37	$14 60	$20	$740	1840.	37	$14 60	$20	$740

C.—Continued.

JOHN CAMMERER,		DR.		CONTRA,		CR.
	No. 1.			No. 1.		
1818.	To amount of rent from 1800 to this date	$467 94	1818.	By clearing and fencing 40 acres of land, $14 60,		$584 00
	" Int. on the same	199 16		" Int. on same		206 06
	" Rent of barn from 1809 to this date, at $15 per an.,	135 00	1809.	" Barn		130 00
	" Int. on same	38 50		" Int. on same		70 20
		$840 60				
	" Balance due	149 66				
		$990 26				$990 26
	No. 2.			No. 2.		
1829.	To am't of rent on 67 acres to this date, from 1818,	$582 42	1829.	By balance due		$149 66
	" Int. on same	468 89		" Clearing and fencing 27 acres, at $14 60,		394 20
	" Rent of barn 10 years	150 00		" Int. on same		108 44
	" Int. on same	39 40		" Setting orchard, 92 trees, a. 25 cts.,		23 00
1824.	" Rent of orchard 6 years at $14 pr. an.	84 00		" Int. on same		13 80
	" Int on same	17 64		" Int. on balance, as above, for ten years,		87 30
						$772 40
				Bal. due def't		565 95
		$1,342 35				$1,336 35
	No. 3.			No. 3.		
1840.	To balance due	$565 95	1840.	By clearing and fencing 37 acres of land, at $14 60 per acre,		$540 20
	" Int. on same to this date, from 1828,	410 28		" Int. on same		285 87
	" Rent on 104 acres of land to this date	2,186 00	1834.	" Brick house		845 00
	" Int. on same	797 30		" Int. on same 6 years		304 20
	" Rent of barn	180 00		" One well		40 00
	" Int. on same	41 20		" Hewed log house in yard		75 00
	" Rent of orchard	168 00		" Smoke-house, stable, &c.,		68 00
	" Int. on same	65 62		" Log cabin, stable, and smoke-house,		30 00
1834.	" Rent of house 6 years	150 00				$2,188 27
	" Int. on same	31 50		Taxes, as per former report, and interest,		206 18
						$2,394 45
		$4,595 85		" Bal. in fav. def't		2,201 40
1841.	To bal. due def't Upshaw	$2,201 40				$4,595 85

C.—Continued.

Years,	1800.	1801.	1802.	1803.	1804.	1805.	1806.	1807.	1808.	1809.	1810.	1811.	1812.	1813.
Cleared land each year,	9	10	11	12	14	15	16	17	18	19	20	24	26	28
Yearly rent per acre,	$1 12	$1 12	$1 12	$1 12	$1 12	$1 12	$1 12	$1 12	$1 12	$1 12	$1 12	$1 12	$1 12	$1 12
Gross rent each year,	10 08	11 20	12 32	13 44	15 68	16 80	17 92	19 04	20 16	21 28	22 40	26 88	29 12	31 36
		10 88	11 42	12 90	14 11	14 11	11 97	13 70	13 30	12 76	12 09	12 51	12 23	11 28
Price of clearing per acre,	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60
Gross price for clearing,	131 40	14 60	14 60	14 60	29 20	14 60	14 60	14 60	14 60	14 60	14 60	58 40	29 20	29 20
Gross int. per year for clearing,		141 91	14 89	14 02	13 15	24 52	11 38	10 51	9 64	8 77	7 90	7 03	24 52	10 51

Am't of rent to 1818, inclusive—Rent, $467 94;—Int. $199 16; Price of clearing land, $584 00;—Int. $202 06.

Years,	1814.	1815.	1816.	1817.	1818.	1819.	1820.	1821.	1822.	1823.	1824.	1825.	1826.	1827.	1828.
Cleared land each year,	29	30	40	40	40	42	45	48	50	54	58	60	62	65	67
Yearly rent per acre,	$1 12	$1 12	$1 12	$1 12	$1 12	$1 42	$1 42	$1 42	$1 42	$1 42	$1 42	$1 42	$1 42	$1 42	$1 42
Gross rent each year,	32 48	33 60	44 80	44 80	44 80	59 64	63 90	68 16	71 00	76 68	82 36	85 20	88 04	92 30	95 14
	9 74	8 05	8 06	5 37	2 68	29 56	35 78	34 50	32 71	32 20	29 64	25 56	21 12	16 61	11 41
Price of clearing per acre,	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60
Gross price for clearing,	14 60	14 60	146 00	: :	: :	29 20	43 80	43 80	29 20	58 40	58 40	29 20	29 20	43 80	29 20
Gross int. per year for clearing,	8 76	3 50	2 63	17 52	: :	: :	15 76	21 02	18 20	10 53	17 52	14 02	5 26	3 57	2 62

Am't of rent to 1828, inclusive—Rent, $582 42,—Int., $468 89; Price of clearing land, $394 20,—Int., $108 44.

Years,	1829.	1830.	1831.	1832.	1833.	1834.	1835.	1836.	1837.	1838.	1839.	1840.
Cleared land each year,	67	89	89	89	98	100	100	101	101	102	103	104
Yearly rent per acre,	$2 00	$2 00	$2 00	$2 00	$2 00	$2 00	$2 00	$2 00	$2 00	$2 00	$2 00	$2 00
Gross rent each year,	134 00	178 00	178 00	178 00	196 00	200 00	200 00	202 00	202 00	204 00	206 00	208 00
	68 50	88 44	106 80	96 12	85 44	88 32	72 00	60 00	48 48	36 36	24 48	12 36
Price of clearing per acre,	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60
Gross price for clearing,	: :	321 20	: :	: :	131 40	29 20	14 60	: :	: :	14 60	14 60	14 60
Gross int. per year for clearing,	21 02	: :	192 72	: :	: :	55 60	10 57	: :	3 50	: :	1 75	0 87

Rent, $2,186 00,—Int., $797 30; Price of clearing, $530 20,—Int., $285 87.

C.—Continued.

JOHN CAMMERER,	DR.		CONTRA,	CR.
No. 4.			No. 4.	
1840. To rent of 104 acres of land from 1819 to this date	$2,768 42	1818.	By clearing and fencing 40 acres to this date, at $14 60,	$584 00
Per contra	716 00	1809.	" Barn, present value,	130 00
Balance due Upshaw	$2,052 42			$714 00
Per contra	216 00		By value of improved land above mentioned, as before,	216 00
Balance due Upshaw,	$1,836 42			
John Cammerer, No. 5.	*Dr.*		*Contra,* No. 5.	*Cr.*
1840. To rent of 104 acres from 1829 to this date, inclusive,	$2,186 00	1828.	By clearing and fencing 67 acres up to this date, at $14 60 per acre,	$976 20
" Rent of Orchard same time	168 00	1809.	" Barn, present value,	130 00
	$2,354 00	1820.	" Setting 92 apple trees, 25 cts.	23 00
Per contra	1,129 20			$1,129 20
	$1,224 80		By improved value of land	$361 80
Per contra	588 80		By improved value of orchard	227 00
	$636 00			$588 80
1834. To rent of house six years	150 00			
	$786 00			
John Cammerer, No. 6.	*Dr.*		*Contra,* No. 6.	*Cr.*
1840. To rent of land from 1819 to this date, inclusive,	$2,768 42	1840.	By clearing, &c., 40 acres, up to 1819, at its present value,	$800 00
" Int. on same	1,246 19	1809.	" Barn, at its present value,	130 00
	$4,014 61		" Hewed log house, do.	75 00
Per contra	1,035 00		" Log cabin, stable and corn-crib	30 00
	$2,979 61			$1,035 00
1834. To rent of house 6 years	150 00			
Bal. due Upshaw	$2,829 61			
Per contra	206 18		Am't of tax and interest, as before reported	206 18
Bal. due Upshaw	$2,623 43			

Note.—The present value of the cleared land over and above the cost, produced by the natural decay of timber, and annually clearing it off, at $20 per acre, as it now is, - - - - - - - $561 60

The present value of the orchard, over and above the cost, produced by the natural growth of the trees, - - - - - 227 00

$788 60

Dec'r 8th, 1840. THOMAS H. LINCH.

C.—Continued.

JOHN CAMMERER,		DR.	CONTRA,		CR.
	No. 7.			No. 7.	
1840.	To rent from 1829 to this date	$2,186 00	1840.	By clearing, &c., 67, at present value,	$1,340 00
	" Interest thereon, same time	797 30		" Orchard, at its present value,	250 00
	" Rent of orchard do.	168 00		" Barn, at its present value,	130 00
	" Int. on same	65 62		" Hewed log houses, stable, &c.,	30 00
	" Rent of house 6 years	150 00		" Am't of tax and int.	206 18
	" Int. on same	31 50			
		$3,398 42			
	Per contra	2,031 18			
	Bal. due Upshaw	$1,367 24			$2,031 18
	John Cammerer,	*Dr.*		*Contra,*	*Cr.*
	No. 8.			No. 8.	
1818.	To am't of rent from 1800 to this date	$467 94	1818.	By clearing 40 acres, at $14 60,	$584 00
	" Int. on same	199 16		" Int. on same	206 06
			1809.	" Barn	130 00
		$667 10		" Int. on same	70 20
	Bal. due for improvements	323 16			
		$990 26			$990 26
	No. 9.			No. 9.	
1829.	To am't of rent on 67 acres from 1818	$582 42	1829.	By balance due as above	$323 16
	" Int. on same	468 89		" Int. on same from 1818	193 80
				" Clearing and fencing 27 acres, at $14 60 per acre,	394 20
		$1,051 31		" Int. on same	108 44
	Bal. due for improvements	6 09	1816.	" Setting 92 trees, 25 cts. each,	23 00
				" Int. on same	13 80
		$1,057 40			$1,057 40

C.—Continued.

JOHN CAMMERER,	DR.		CONTRA,	CR.
	No. 10.		No. 10.	
1840. To am't of rent on 104 acres of land to this date	$2,186 00	1840.	By balance due as above	$6 09
" Int. on same	797 30		" Int. on same	4 52
	$2,983 30		" Clearing 37 acres, at $14 60	540 20
Bal. due for improvement	210 16		" Int. on same	285 87
		1834.	" Brick house	845 00
			" Int. on same	304 20
			" One well	40 00
			" Hewed log house in yard	75 00
			" Smoke-house and stable	68 00
			" Log cabin, stable, smoke-house,	30 00
			" Am't of tax and int.	206 18
				$2,404 86
			Increased val. land on cost	561 60
			Increased val. of orchard	227 00
	$3,193 46			$3,193 46

John Cammerer,	*Dr.*		*Contra,*	*Cr.*
	No. 11.		No. 11.	
1840. To am't of rent on 104 acres, from 1829 to this date, inclusive,	$2,186 00	1829.	By clearing and fencing 67 acres up to this date, at $14 60 per acre,	$978 20
	797 30		" Int. on same	310 50
	$2,983 30	1809.	" Barn, cost value,	250 00
Bal. due for improvements	84 98		" Int. on same	285 00
		1816.	" Setting 92 trees, 25 cts. each,	23 00
			" Int. on same	13 80
			" One well	40 00
			" Hewed log house in yard	75 00
			" Smoke-house and stable	68 00
			" Log cabin, stable, smoke-house	30 00
			" Increased val. of cleared land, as before stated,	561 60
			" Increased val. of orchard	227 00
			" Am't of tax and int.	206 18
	$3,068 28			$3,068 28

Dec'r 8th, 1840. THOMAS H. LINCH.

D.

House.			Kitchen.			Orchard.				Barn.			Cabin Smoke H.		Stable.	
Date.	Cost.	Present value.	Date.	Cost.	Present value.	Date.	No. Trees.	Cost per Tree.	Total value now.	Date.	Cost.	Present value.	Date.	Present value.	Date.	Present value.
1836.		$660		Valued with House.		1820.	100	25 cts.	$350	1838.		$150		$50		$50

Clearing and Fencing to 1818.						Clearing to 1828.						Clearing to 1840.					
Date.	No. acres.	Cost per acre.	Total cost.	Present value pr. acre.	Total value now.	Date.	No. acres.	Cost per acre.	Total cost.	Present value pr. acre.	Total present value.	Date.	No. acres.	Cost per acre.	Total cost.	Present value pr. acre.	Total present value.
before 1819.	82	$14 60	$1197 20	$20	$16 40	before 1829.	3	$14 60	$43 80	$20	$60	before 1840.	5	$14 60	$73	$20	$100

D.—Continued.

Years	1800.	1801.	1802.	1803.	1804.	1805.	1806.	1807.	1808.	1809.	1810.	1811.	1812.	1813.
Cleared land each year	12	22	32	42	50	60	65	66	67	68	70	71	71	72
Yearly rent per acre	$ 1 00	$ 1 00	$ 1 00	$ 1 00	$ 1 00	$ 1 00	$ 1 00	$ 1 00	$ 1 00	$ 1 00	$ 1 00	$ 1 00	$ 1 00	$ 1 00
Gross rent each year	12 00	22 00	32 00	42 00	50 00	60 00	65 00	66 00	67 00	68 00	70 00	71 00	71 00	72 00
Gross interest each year		12 96	22 44	30 72	36 30	42 00	46 80	46 80	43 56	40 20	37 80	33 60	29 40	25 56
Price of clearing per acre	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60
Gross price for clearing	195 20	146 00	146 00	146 00	116 80	146 00	73 00	14 60	14 60	14 60	29 20	14 60		14 60
Gross interest for clearing		201 78	148 92	140 16	131 50	84 11	113 88	52 56	9 57	8 70	15 75	14 00	6 09	

Years	1814.	1815.	1816.	1817.	1818.	1819.	1820.	1821.	1822.	1823.	1824.	1825.	1826.	1827.
Cleared land each year	73	75	76	80	82	83	85	85	85	85	85	85	85	85
Yearly rent per acre	$ 1 00	$ 1 00	$ 1 00	$ 1 00	$ 1 00	$ 1 30	$ 1 30	$ 1 30	$ 1 30	$ 1 30	$ 1 30	$ 1 30	$ 1 30	$ 1 30
Gross rent each year	73 00	75 00	76 00	80 00	82 00	107 90	110 50	110 50	110 50	110 50	110 50	110 50	110 50	110 50
Gross interest each year	21 60	18 00	13 68	9 66	9 60	42 20	57 38	52 04	45 31	38 68	32 05	25 42	18 79	12 16
Price of clearing per acre	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60
Gross price for clearing	14 60	29 20	14 60	58 40	29 20	14 60	29 20							
Gross int. for clearing	4 37	3 47	5 25	1 75	3 50	17 50	7 83	14 00						

Price of clearing land, $1,197 20; Interest, $950 36;—Amount of rent to 1818 inclusive, $1,154 00; Interest, $522 58.

Years	1828.	1829.	1830.	1831.	1832.	1833.	1834.	1835.	1836.	1837.	1838.	1839.	1840.	Rent. $2,015 86 Int. 665 86
Cleared land each year	85	88	88	88	89	90	90	90	90	90	90	90	90	
Yearly rent per acre	$ 1 30	$ 1 88	$ 1 88	$ 1 88	$ 1 88	$ 1 88	$ 1 88	$ 1 88	$ 1 88	$ 1 88	$ 1 88	$ 1 88	$ 1 88	
Gross rent each year	110 50	165 44	165 44	165 44	165 44	169 20	169 20	169 20	169 20	169 20	169 20	169 20	169 20	
Gross int. each year	55 30	79 56	90 28	80 36	70 44	60 52	71 05	60 90	50 75	40 60	30 45	20 30	10 15	
Price of clearing per acre	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	
Gross price for clearing		43 80			14 60	14 60								$73 00
Gross int. for clearing			27 72			6 96	6 09							40 77

Amount of rent to 1829 inclusive, $1,101 50; Interest, 536 56. Clearing, $43 80; Interest, $39 33.

D.—Continued.

DAVID FISHER and others, DR.			CONTRA,		CR.
	No. 1.			No. 1.	
1818.	To rent for 82 acres, from 1800 to this date	$1,154 00	1818.	By clearing, &c., 82 acres, $14 60	$1,197 20
	" Int. on same	522 58		" Int. on same	950 36
		$1,676 58	1816.	" Setting 100 apple trees, 25 cents	25 00
	Bal. due D. Fisher & als.	478 98		" Int. on same	3 00
		$2,175 56			$2,175 56
	David Fisher & others,	*Dr.*		*Contra,*	*Cr.*
	No. 2.			No. 2.	
1829.	To rent from 1818 to this date, 85 acres	$1,101 50	1829.	By balance due	$498 98
	" Int. on same	536 56		" Int. on same	299 38
	" Rent of orchard from 1819, at $15	135 00		" Clearing, &c., 3 acres, at $14 60	43 80
	" Int. on same	40 50		" Int. on same	39 33
					881 49
				Balance due Upshaw	932 07
		$1,813 56			$1,813 56
	David Fisher & others,	*Dr.*		*Contra,*	*Cr.*
	No. 3.			No. 3.	
1840.	By balance due	$932 07	1840.	By clearing five acres, at $14 60	$73 00
	" Int. on same	672 53		" Int. on same	40 77
	" Rent on 90 acres, from 1828	2,105 36	1836.	" House, frame	660 00
	" Int. on same	665 36		" Int. on same	158 40
	" Rent of orchard 12 y'rs	180 00	1838.	" Barn	150 00
	" Int. on same	70 20		" Int. on same	18 00
1836.	" Rent of house 4 years, at $36	144 00		" Cabin, smoke house &c.	50 00
	" Int. on same	21 60		" Stable, &c.	50 00
		$4,793 12			
	Per contra	1,200 17			$1,200 17
	Bal. due Upshaw	$3,592 95		*Note.*—The increased value of the land, over and above the cost, produced by the natural decay and clearing up of the timber annually,	$486 00
	Per contra	811 00			
		$2,781 95			
	Deduct for 50 young trees, not bearing, 25 cts. each	12 50		Increased value of orchard over and above the cost, produced by growth of trees,	325 00
	Bal. due deft. Upshaw	$2,769 45			
	Deduct for tax and int.	180 91			$811 00
		$2,588 54			

December 8th, 1840. THOMAS H. LINCH.

D.—Continued.

DAVID FISHER and others, DR. CONTRA, CR.

	No. 4.			No. 4.	
1840.	To rent of 90 acres, from 1819 - - -	$3,116 86	1818.	By clearing, &c., 28 acres, $14 60 - - -	$1,197 20
1820.	" Rent of orchard to this date - - -	315 00		" Setting 100 apple trees, 25 cents - -	25 00
		$3,431 86			$1,222 20
	Per contra - -	1,222 20			
	Balance due Upshaw -	$2,209 66			
	Per contra - -	811 00			
		$1,398 66		By increased value of land	$486 00
1836.	" Rent of house 4 years	144 00		" increased value of orchard - - -	325 00
		$1,542 66			$811 00

	David Fisher & others, No. 5.	*Dr.*		*Contra,* No. 5.	*Cr.*
1840.	To rent of 90 acres, from 1828 - - -	$2,015 36	1828.	By clearing 85 acres, at $14 60 - - -	$1,241 00
1820.	" Rent of orchard, same time - - -	180 00		" Setting 100 apple trees, at 25 cents - -	25 00
1836.	" Rent of house 4 years	144 00			$1,266 00
		$2,339 36		" Increased value of land	$502 20
	Per contra - -	1,266 00		" Increased value of orchard - - -	325 00
	Balance due Upshaw -	$1,073 36			$827 20

	David Fisher & others, No. 6.	*Dr.*		*Contra,* No. 6.	*Cr.*
1840.	To rent of 90 acres, from 1819 - - -	$3,116 86	1840.	By clearing, &c., 82 acres, at $20 - - -	$1,640 00
	" Int. on same - -	1,201 36		" Orchard, present value	350 00
	" Rent of house 4 years	144 00		" Tax and interest -	180 91
	" Int. on same - -	21 60			$2,170 91
	" Rent of orchard -	315 00		Bal. due deft. Upshaw -	2,738 61
	" Int. on same - -	110 70			
		$4,909 52			$4,909 52

	David Fisher & others, No. 7.	*Dr.*		*Contra,* No. 7.	*Cr.*
1840.	To rent of land, 90 acres, from 1818 to this date	$2,015 36	1840.	By clearing, &c., 85 acres of land, at $20 -	$1,700 00
	" Int. thereon - -	665 36		" Orchard, at value -	350 00
	" Rent of orchard -	180 00		" Tax and interest -	180 90
	" Int. on same - -	70 20			$2,230 90
	" Rent of house - -	144 00		Balance due deft. Upshaw	865 62
	" Int. on same - -	21 60			
		$3,096 52			$3,096 52

D.—Continued.

DAVID FISHER and others, DR.			CONTRA,		CR.
	No. 8.			No. 8.	
1818.	To rent for 82 acres, from 1800 to this date -	$1,154 00	1818.	By clearing and fencing 82 acres, at $14 60 per acre - -	$1,197 20
	" Int. on same - -	522 58		" Int. on same - -	950 36
		$1,676 58	1816.	" Setting 100 apple trees, 25 cents - -	25 00
	Bal. due for improvements	498 98		" Int. on same - -	3 00
		$2,175 56			$2,175 56
	No. 9.			No. 9.	
1829.	To rent from 1818 to this date, on 85 acres of land - - -	$1,101 50	1829.	By balance due as above	$498 98
	" Int. on same - -	536 56		" Int. on same - -	299 38
				" Clearing three acres, at $14 60 - - -	43 80
				" Int. on same - -	39 33
					$881 49
				Bal. due Upshaw for rents	756 57
		$1,638 06			$1,638 06
	No. 10.			No. 10.	
1840.	To balance due as above	$756 57	1840.	By clearing 5 acres, at $14 60 - - -	$73 00
	" Int. thereon, from 1829 to this date inclusive	524 68		" Int. on same - -	40 77
	" Rent on 90 acres, from 1828 - - -	2,105 36	1836.	" Frame dwelling house	660 00
	" Int. on same - -	665 36		" Int. on same - -	158 40
			1838.	" Barn - - -	150 00
				" Int. on same - -	18 00
				" Cabin smoke-house -	50 00
				" Stable - - -	50 00
				" 50 young apple trees, not bearing, 25 cents	12 50
				" Increased value of cleared land - -	486 00
				" Increased value of orchard - - -	325 00
				" Amount of tax and int.	180 91
					$2,204 58
				Balance due for rents -	1,847 39
		$4,051 97			$4,051 97

D.—Continued.

DAVID FISHER and others, DR. CONTRA, CR.

	No. 11.			No. 11.	
1840.	To rent on 90 acres, from 1828 to this date inclusive	$2,105 36	1829.	By clearing and fencing 85 acres, $14 60	$1,241 00
	" Int. on same	665 36		" Int. on same	989 69
		$2,770 72	1816.	" Setting 100 apple trees, 25 cents	25 00
	Bal. due for improvements	694 88		" Int. on same	18 00
				" Cabin and smoke house	50 00
				" Stable	50 00
				" Increased value of cleared land, over original cost	486 00
				" Increased value of orchard	325 00
				" Am't of tax and int.	180 91
		$3,465 60			$3,465 60

December 8th, 1840. THOMAS H. LINCH.

E.

House.			Kitchen.			Orchard.				Barn.			Stable.			Other out-buildings.		
Date.	Cost.	Pres't value.	Date.	Cost.	Pres't value.	Date.	No. Trees.	Value then pr. tree.	Total value now.	Date.	Cost.	Pres't value.	Date.	Cost.	Pres't value.	Date.	Cost.	Pres't value.
1818.	$1100	$1200	Valued with other buildings.			1816.	100	25 cts.	$380	1812.	$250	$150	1824.	$135	$150			$50

Clearing and Fencing to 1818.						Clearing and Fencing.						Clearing and Fencing.					
Date.	No. acres.	Cost per acre.	Total cost.	Present value pr. acre.	Total present value.	Date.	No. acres.	Cost per acre.	Total cost.	Present value pr. acre.	Total present value.	Date.	No. acres.	Cost per acre.	Total cost.	Total present value.	Present value pr. acre.
before 1819.	43	$14 60	$627 80	$20	$860	before 1829.	9	$14 60	$131 40	$20	$180	since 1829.	8	$14 60	$116 80	$160	$20

E.—Continued.

JOHN McWILLIAMS, DR.			CONTRA,		CR.
	No. 1.			No. 1.	
1818.	To rent from 1800 on 43 acres of land - -	$646 38	1818.	By clearing 43 acres, at $14 60 - - -	$672 80
	" Int. on same - -	281 36		" Int. on same - -	456 31
	" Rent of barn 6 years, at $15 - - -	90 00	1818.	" Dwelling-house, cost	1,100 00
	" Int. on same - -	17 10	1816.	" Setting 100 apple tree, 25 cents - -	25 00
		$1,034 84		" Int. on same 2 years	3 00
	Balance due complainant, McWilliams - -	1,381 27	1812.	" Hewed log barn, value	150 00
				" Int. on same 6 years	54 00
		$2,416 11			$2,416 11
	John McWilliams, No. 2.	*Dr.*		*Contra,*	*Cr.*
1829.	To am't of rent for 52 acr's	$686 58	1829.	By balance - - -	1,381 27
	" Int. on same - -	445 68		" Int. on same - -	828 62
	" Rent of barn at $15 per ann. - - -	150 00		" Clearing, &c., 9 acres, at $14 60 - -	131 40
	" Int. on same - -	49 50		" Int. on same - -	47 89
	" Rent of house at $34	340 00	1824.	" Stable, cost - -	135 00
	" Int. on same - -	112 20		" Int. on same - -	32 40
	" Rent of orchard 9 years, at $19 - - -	171 00			
	" Int. on same - -	51 30			
	" Rent of stable 4 years, at $10 - - -	40 00			
	" Int. on same - -	6 00			
		$2,052 26			
	Bal. due McWilliams -	504 32			$2,556 58
		$2,556 58			
	John McWilliams, No. 3.	*Dr.*		*Contra,*	*Cr.*
1840.	To rent on 60 acres from 1840 - - -	$1,382 00	1840.	By balance due - -	$504 32
	" Int. on same - -	469 82		" Int. on same - -	363 11
	" Rent of house - -	408 00		" Clearing, &c., 8 acres	116 80
	" Int. on same - -	159 10		" Int. on same - -	46 99
	" Rent of orchard -	222 00		" Out-buildings - -	50 00
	" Int. on same - -	88 92		" Additional value of house, at present -	100 00
	" Rent of barn - -	180 00		" Am't of tax and int.	216 17
	" Int. on same - -	69 20			$1,412 39
	" Rent of stable - -	120 00		Bal. due Upshaw - -	1,723 05
	" Int. on same - -	46 40			
		$3,315 44			$3,135 44

Note.—The increased value of land, over and above the cost produced by the natural decay and clearing up of trees, annually - - - $324 00
Increased value of orchard, produced by growth of trees - - - 355 00
$679 00

December 8th, 1840. THOMAS H. LINCH.

E—Continued.

Years.	1800.	1801.	1802.	1803.	1804.	1805.	1806.	1807.	1808.
Cleared land each year,	6	12	18	20	23	25	28	30	32
Yearly rent per acre,	$1 12	$1 12	$1 12	$1 12	$1 12	$1 12	$1 12	$1 12	$1 12
Gross rent each year,	6 72	13 44	20 16	22 40	25 76	28 00	31 36	33 60	35 84
Gross interest each year,		7 25	13 70	19 20	20 16	21 63	21 84	22 57	21 50
Price of clearing per acre,	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60
Gross price of clearing,	87 60	87 60	87 60	29 20	43 80	29 20	43 80	29 20	29 20
Gross interest for clearing,	94 50	89 25	84 00	26 25	36 68	22 75	31 44	19 25	17 50

Years.	1809.	1810.	1811.	1812.	1813.	1814.	1815.	1816.	1817.	1818.
Cleared land each year,	34	35	36	37	38	39	40	41	42	33
Yearly rent per acre,	$1 12	$1 12	$1 12	$1 12	$1 12	$1 12	$1 12	$1 12	$1 12	$1 12
Gross rent each year,	38 08	39 20	40 32	41 44	42 56	43 68	44 80	45 92	47 04	48 16
Gross interest each year,	21 16	18 81	16 93	14 91	12 76	10 48	8 04	5 50	2 87	
Price of clearing per acre,	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60
Gross price of clearing,	29 20	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60
Gross interest for clearing,	7 83	6 96	6 09	5 12	4 25	3 38	2 51	1 64	00 87	

Clearing, $627 80. Interest, $456 31. Rent, $646 38. Interest, $281 36.

E.—Continued.

Years.	1819.	1820.	1821.	1822.	1823.	1824.	1825.	1826.	1827.	1828.		
Cleared land each year,	44	45	46	47	48	49	50	51	52	52		
Yearly rent per acre,	$1 42	$1 42	$1 42	$1 42	$1 42	$1 42	$1 42	$1 42	$1 42	$1 42		
Gross rent each year,	62 48	63 90	65 32	66 74	68 16	69 58	71 00	72 42	73 84	73 84	Rent,	$686 58.
Gross int. each year,	31 68	37 40	34 47	31 28	27 50	24 48	20 85	17 04	13 02	8 86	Interest,	$445 68.
Price of cl'ng per acre,	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60		
Gross price of clearing,	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	Clearing,	$131 40.
Gross int. for clearing,	8 70	7 83	6 96	6 09	5 22	4 36	3 49	2 62	1 75	00 87	Interest,	$47 89.

Years.	1829.	1830.	1831.	1832.	1833.	1834.	1835.	1836.	1837.	1838.	1839.	1840.	
Cleared land each year,	53	54	55	56	57	57	57	58	59	60	60	60	
Yearly rent per acre,	$2 00	$2 00	$2 00	$2 00	$2 00	$2 00	$2 00	$2 00	$2 00	$2 00	$2 00	$2 00	
Gross rent each year,	106 00	108 00	110 00	112 00	114 00	114 00	114 00	116 00	118 00	120 00	120 00	120 00	$1,382 00
Gross interest each year,	53 16	47 46	64 80	59 40	53 76	47 88	41 04	34 80	24 32	21 60	14 40	7 20	469 82
Price of clearing p. acre,	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	
Gross price of clearing,	14 60	14 60	14 60	14 60	14 60			14 60	14 60	14 60			116 80
Gross interest for clear'g,		9 57	8 70	7 83	6 96	6 09			3 48	2 61	1 75		46 99

E.—Continued.

JOHN McWILLIAMS, DR.				CONTRA,		CR.
	No. 4.			No. 4.		
1840.	To rent of 60 acres, from 1818 - - -	$2,068 58	1818.	By clearing 43 acres, at $14 60 - - -		$646 38
	" Rent of house at $34, from 1818 - -	748 00		" Brick dwelling-house		1,100 00
	" Rent of orchard, from 1820, at $19 - -	399 00	1812.	" Barn - - -		150 00
	" Rent of barn from 1818, at $15 - - -	330 00	1816.	" Setting 100 apple trees 25 cents - -		25 00
		$3,545 58		By increased value of land,		1,891 38
	Per contra, - -	1,891 38		" increased value of orchard - - -		$232 20 355 00
	Balance in favor of def'nt, Upshaw - - -	$1,654 20				$587 20
	John McWilliams,	*Dr.*		*Contra,*		*Cr.*
	No. 5.			No. 5.		
1840.	To rent of 60 acres, from 1828, - - -	$1,382 00	1828.	By clearing 52 acres, at $14 60 - - -		$759 20
	" Rent of house, at $34, from 1828 - -	480 00	1818.	" Brick dwelling-house		1,100 00
	" Rent of orchard, at $19	228 00	1812.	" Barn - - -		150 00
	" Rent of barn, at $15	180 00	1816.	Setting 100 apple trees, 25 cents - -		25 00
	" Rent of stable 12 years, at - - - -	120 00	1824.	" Stable - - -		150 00
		$2,390 00				
	Per contra, - -	2,184 20				
	Bal. in favor of Upshaw,	$205 80				$2,184 20
	John McWilliams.	*Dr.*		*Contra,*		*Cr.*
	No. 6.			No. 6.		
1840.	To rent of land from 1818,		1818.	By clearing, &c., 43 acres, at $20 - - -		$860 00
	" Int. on same - -	$2,068 58		" Brick dwelling-house		1,200 00
	" Rent of house, - -	915 50	1818.	" Barn - - -		150 00
	" Int. on same - -	748 00	1812.	" Orchard - - -		380 00
	" Rent of barn, - -	271 10	1816.	" Tax and interest -		216 17
	" Int. on same - -	330 00				$1,806 17
	" Rent of orchard, from 1820 - - -	118 70 399 00		Bal. due Upshaw -		$3,357 33
	" Int. on same - -	140 22				
	" Rent of stable -	120 00				
	" Int. on same - -	52 40				
		$5,163 50				$5,163 50

E.—Continued.

JOHN MCWILLIAMS, DR.			CONTRA,		CR.
	No. 7.			No. 7.	
1840.	To rent of land from 1828	$1,382 00	1828.	By clearing 52 a's, at $20,	$1,040 00
	" Int. on same	469 82	1818.	" House, present value,	1,200 00
	" Rent of house - -	408 00	1812.	" Barn - - -	150 00
	" Int. on same - -	159 10	1816.	" Orchard - - -	380 00
	" Rent of barn - -	180 00	1824.	" Stable - - -	150 00
	" Int. on same - -	69 20		" Tax and Int. - -	216 17
	" Rent of orchard -	222 00			
	" Int. on same - -	88 92			
	" Rent of stable - -	120 00			
	" Int. on same - -	46 40			
		$3,145 44			
	Per contra - - -	3,136 17			
	Bal. due Upshaw - -	$9 27			$3,136 17
	John McWilliams,	*Dr.*		*Contra,*	*Cr.*
	No. 8.			No. 8.	
1818.	To rent, from 1800, on 43 a's of land, - -	$646 38	1818.	By clearing 43 a's, at $14 60, - - -	$672 80
	" Int. on same - -	281 36		" Int. on same - -	456 31
		$927 74	1818.	" Brick dwelling-house	1,100 00
	Bal. due for improvements	1,669 45	1816.	" Setting 100 apple trees 25 cts. - - -	25 00
				" Int. on same - -	3 00
			1812.	" Hewed log barn -	250 00
				" Int. on same 6 years -	90 00
		$2,597 19			$2,597 19
	No. 9.			No. 9.	
1829.	To am't of rent for 52 acres - - -	$686 58	1829.	By balance due as above	$1,669 45
	" Int. on same - -	445 68		" Int. on same - -	1,001 60
		$1,132 26		" Clearing, &c., 9 acres a. $14 60 - -	131 40
	Bal. due for improvements	1,885 54		" Int. on same - -	47 89
			1824.	" Stable, cost, - -	135 00
				" Int. on same - -	32 40
		$3,017 74			$3,017 74

E.—Continued.

JOHN McWILLIAMS,	DR.		CONTRA,	CR.
	No. 10.		No. 11.	
1840. To rent on 60 acres from 1828 to this date, inclusive	$1,382 00	1840. By balance due as above		$1,885 54
" Int. on same	469 82	" Int. on same		1,357 56
	$1,851 82	" Clearing 8 acres		116 80
Bal. due for improvements	2,600 24	" Int. on same		46 99
		" Out-buildings		50 00
		" Additional val. house		100 00
		" Am't of tax and int.		216 17
		" Increased value of land over original cost, as before stated,		324 00
		" Increased value of orchard		355 00
	$4,452 06			$4,452 06

	John McWilliams,	*Dr.*		*Contra,*	*Cr.*
	No. 11.			No. 11.	
1840.	To am't of rent from 1829 to this date, inclusive, 60 acres,	$1,382 00	1829.	By clearing 52 acres of land, at $14 60,	$759 20
	" Int. on same	469 82		" Int. on same	504 20
		$1,851 82	1812.	" Hewed log barn, cost,	250 00
	" Bal. due for improvements	2,550 98		" Int. on same 16 years	240 00
		$4,402 80	1816.	" Setting 100 apple trees at 25 cts. each,	25 00
	" Bal. due for improvements, as above,	$2,550 98		" Int. on same 12 years	18 00
	" Tax and int., as reported	216 17	1818.	" Brick dwelling-house, cost,	1,100 00
				" Int. on same	660 00
			1824.	" Frame stable	135 00
				" Int. on same 4 years	32 40
				" Increased value of land as before stated	324 00
				" Increased value of orchard	355 00
	Bal. due McWilliams	$2,767 15			$4,402 80

Dec't 8th, 1840.

THOMAS H. LINCH.

F.

Years,	1800.	1801.	1802.	1803.	1804.	1805.	1806.	1807.	1808.	1809.
Cleared land each year,	2	4	5	7	9	12	14	15	16	18
Yearly rent per acre,	$1 12	$1 12	$1 12	$1 12	$1 12	$1 12	$1 12	$1 12	$1 12	$1 12
Gross rent each year,	2 24	4 48	5 60	7 84	10 08	13 44	15 68	16 80	17 92	20 16
Gross int. each year,		2 34	4 42	5 28	6 95	8 50	10 40	11 28	11 00	10 07
Price of clearing per acre,	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60
Gross price for clearing,	29 20	29 20	14 60	29 20	29 20	43 80	29 20	14 60	14 60	29 20
Gross int. for clearing,		31 50	29 75	13 92	26 25	24 50	34 06	21 00	9 57	17 50

Years,	1810.	1811.	1812.	1813.	1814.	1815.	1816.	1817.	1818.	Am't of rent to 1818, inclusive.
Cleared land each year,	20	22	23	24	25	26	27	28	29	
Yearly rent per acre,	$1 12	$1 12	$1 12	$1 12	$1 12	$1 12	$1 12	$1 12	$1 12	
Gross rent each year,	22 40	24 64	25 76	26 88	28 00	29 12	30 24	31 36	32 48	$365 12
Gross int. each year,	10 80	10 72	10 99	9 24	8 05	6 92	5 22	3 62	1 88	136 29
Price of clearing per acre,	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	
Gross price for clearing,	29 20	29 20	14 60	14 60	14 60	14 60	14 60	14 60	14 60	$423 40
Gross int. for clearing,	15 75	14 00	12 25	5 22	4 35	3 48	2 61	1 75	0 87	267 43

F.—Continued.

Years,	1819.	1820.	1821.	1822.	1823.	1824.	1825.	1826.	1827.	1828.	
Cleared land each year,	33	35	37	39	42	45	48	50	54	56	
Yearly rent per acre,	$1 42	$1 42	$1 42	$1 42	$1 42	$1 42	$1 42	$1 42	$1 42	$1 42	
Gross rent each year,	46 86	49 70	52 54	55 38	59 64	63 90	68 10	70 94	73 78	74 62	$615 46
Gross int. each year,	19 48	19 79	23 84	22 05	19 92	17 75	15 22	12 24	8 50	4 42	163 31
Price of clearing per acre,	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	
Gross price for clearing,	58 40	29 20	29 20	29 20	43 80	43 80	43 80	29 20	58 40	29 20	394 20
Gross int. for clearing,	8 70	31 50	14 00	12 25	10 50	13 40	10 72	8 04	3 50	3 50	116 11

Years,	1829.	1830.	1831.	1832.	1833.	1834.	1835.	1836.	1837.	1838.	1839.	1840.	
Cleared land each year,	58	60	60	60	61	61	62	62	63	63	64	64	
Yearly rent per acre,	$2 00	$2 00	$2 00	$2 00	$2 00	$2 00	$2 00	$2 00	$2 00	$2 00	$2 00	$2 00	
Gross rent each year,	116 00	120 00	120 00	122 00	122 00	122 00	124 00	124 00	126 00	126 00	128 00	128 00	Rent, $1,486 00
Gross int'st each year,	53 64	76 56	72 00	64 80	57 60	51 24	43 92	37 20	29 70	22 68	15 12	7 68	Int., 520 00
Price of clearing per acre,	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	
Gross price for clearing,	29 20	29 20	: :	: :	14 60	: :	14 60	: :	14 60	: :	14 60	: :	118 00
Gross int. for clearing,	21 00	27 45	25 70	: :	: :	6 09	: :	4 35	: :	2 61	87	: :	88 07

F.—Continued.

SAMUEL BUCHANNON, DR.			CONTRA,		CR.
	No. 1.			No. 1.	
1818.	To rent from 1800 to present time, 29 a's, -	$365 12	1818.	By clearing 29 a's, at $14 60, - - -	$423 40
	" Int. on same	136 29		" Int. on same	267 43
	" Rent of house 8 years, at $20, - - -	160 00	1810.	" Hewed log house -	200 00
	" Int. on same	43 00		" Int. on same	96 00
		$704 61	1816.	" Setting 109 apple trees, 25 cts., - - -	27 25
	Balance in favor of Buchannon - - -	312 74		" Int. thereon - -	3 27
		$1,017 35			$1,017 35
	Samuel Buchannon,	*Dr.*		*Contra,*	*Cr.*
	No. 2.			No. 2.	
1829.	To rent of 56 acres of land from 1818 - -	$615 46	1829.	By balance due - -	$312 74
	" Int. on same	163 31		" Int. on same	187 64
	" Rent of house from 1818, at $20, - -	200 00		" Clearing 27 a's, $14 60	394 20
	" Int. on same	66 00		" Int. on same	116 11
		$1,310 77			$1,010 69
				Bal. due Upshaw	300 08
					$1,310 77
	Samuel Buchannon,	*Dr.*		*Contra,*	*Cr.*
	No. 3.			No. 3.	
1840.	To balance due - -	$300 08	1840.	By clearing 8 acres, at $14 60 - - -	$118 80
	" Int. on same - -	206 05		" Int. on same - -	88 07
	" Rent, 64 a's, from 1828, - - -	1,486 00	1838.	" Barn, frame, - -	450 00
	" Int. on same - -	520 00		" Int. on same - -	54 00
	" Rent of house since 1828 - - -	240 00		" Well - - -	30 00
	" Int. on same - -	93 60		" Smoke-house, spring-house, other buildings	50 00
	" Rent of orchard, do. -	240 00			$790 87
	" Int. on same - -	93 60		Bal. due Upshaw - -	2,435 66
	" Rent of barn 2 y's, a. $20, - - -	40 00			$3,226 53
	" Int. on same - -	7 00		Tax and int. deducted -	112 64
		$3,226 53			$3,083 89
	Deduct tax and int. -	142 64			
		$3,083 89		Bal. due Upshaw - -	$2,293 89

Note.—The present value of the cleared land, over and above the cost, produced by the natural decay of the timber and the clearing up of the ground, $364 40
The present value of the orchard, produced by the natural growth of the trees, over and above the cost, - - - - - - - - - - 247 75
$612 15

Dec'r 8th, 1840. THOMAS H. LINCH.

F.—Continued.

House.			Barn.			Orchard.					Well.	Smoke-house, Spring-house, Meat-house.	
Date.	Value then.	Value now.	Date.	Value then.	Value now.	Date.	No. Trees	Value then pr. tree.	Value now.	Total value now.	Value now.	Date not known.	Valued together.
1810.	$300	$200	1838.	$450	$450	1816.	109.	25 cts.		$275	$30		$50

Clearing and Fencing.					Clearing and Fencing.									
Date.	No. of acres.	Cost per acre.	Value now pr. acre.	Total value now.	Date.	No. of acres.	Cost per acre.	Value now pr. acre.	Total value. now.	Date.	No. acres.	Cost pr. acre.	Value now pr. acre.	Total value now.
1818.	29	$14 60	$20	$580	1828.	27	$14 60	$20	$540	1840.	8	$14 60	$20	$160

F.—Continued.

Samuel Buchannon, Dr.			Contra,		Cr.
	N. 4.			No. 4.	
1840.	To rent on 64 acres of land since 1818 -	$2,101 46	1818.	By clearing 29 acres, at $14 60, - - -	$423 40
	" Rent of house same time, $20, - -	440 00	1810.	" Hewed log house, value, - - -	200 00
	" Rent of orchard same time, $20, - -	400 00	1816.	" Setting 109 apple trees, 25 cts., - -	27 25
	" Rent of barn 2 years, $20, - - -	40 00			$650 65
				Balance due Upshaw -	2,330 81
					$2,981 46
				By increased value of land	$156 60
				" Increased value of orchard - - -	247 75
		$2,981 46			$424 35
	Samuel Buchannon, No. 5.	*Dr.*		*Contra,* No. 5.	*Cr.*
1840.	To rent of 64 acres, since 1828, - - -	$1,486 00	1828.	By clearing 56 a's at $14 60	$817 60
	" Rent of house same time, $20, - -	240 00	1810.	" Hewed log house, value, - - -	200 00
	" Rent of orchard, 1820, $20, - - -	200 00	1816.	" Setting 109 apple trees, 25 cts., - -	27 25
	" Rent of barn 2 years, $20, - - -	40 00			$1,044 85
				Bal. due Upshaw - -	921 15
		$1,966 00			$1,966 00
	Samuel Buchannon, No. 6.	*Dr.*		*Contra,* No. 6.	*Cr.*
1840.	To rent of land since 1818	$2,101 46	1818.	By clearing, &c., [29 a's, at $20, - - -	$580 00
	" Int. on same - -	683 31		" Orchard, pres. value,	275 00
	" Rent of house, $20, -	440 00		" House, value, - -	200 00
	" Int. on same - -	159 60		" Tax and int. - -	142 64
	" Rent of orchard, $20,	400 00			
	" Int. on same - -	159 60			$1,197 64
	" Rent of barn, 2 years,	40 00		Bal. due Upshaw - -	2,793 17
	" Int. on same - -	7 20			
		$3,991 17			$3,991 17
	Samuel Buchannon, No. 7.	*Dr.*		*Contra,* No. 7.	*Cr.*
1840.	To rent of land since 1828	$1,486 00	1828.	By clearing 56 a's, at $14 60, - - -	$1,120 00
	" Int. on same - -	520 00		" Orchard, value, -	275 00
	" Rent of house, do.,	240 00		" House - - -	200 00
	" Int. on same - -	93 60		" Tax and int. - -	142 64
	" Rent of orchard, do.,	240 00			
	" Int. on same - -	93 60			$1,737 64
	" Rent of barn, 2 years,	40 00			982 76
	" Int. on same - -	7 20			
		$2,720 40			$2,720 40

F.—Continued.

Samuel Buchannon,		Dr.		Contra,		Cr.
	No. 8.			No. 8.		
1818.	To rent from 1800, on 29 acres, to this date -	$365 12	1818.	By clearing 29 acres, at $14 60 - - -		$423 40
	" Int. on the same -	136 29		" Int. on same - -		267 43
		$501 41	1810.	" Hewed log house, cost		300 00
	Balance due for improvements - - -	663 94		" Int. on same - -		144 00
			1816.	" Setting 109 apple trees, 25 cents each -		27 25
				" Int. on the same -		3 27
		$1,165 35				$1,165 35
	Samuel Buchannon,	*Dr.*		*Contra,*		*Cr.*
	No. 9.			No. 9.		
1829.	To rent on 56 acres of land from 1818 to this date	$615 46	1829.	By balance due as above		$663 94
	" Int. on same - -	163 31		" Interest on same to this date - - -		398 30
		$778 77		" Clearing &c., 27 acres, at $14 60 - -		394 20
	Balance due for improvements - - -	793 78		" Int. on same - -		116 11
		$1,572 55				$1,572 55
	No. 10.			No. 10.		
1840.	To rent 64 acres, from 1828 - - -	$1,486 00	1840.	By balance due as above		$793 78
	" Int. on same - -	520 00		" Int. on same, from 1829 inclusive - -		571 44
		$2,006 00		" Clearing eight acres, $14 60 - -		118 80
	Balance due for improvements - - -	1,104 88		" Int. on same - -		88 07
			1838.	" Frame barn - -		450 00
				" Int. on same - -		54 00
				" Well - - -		30 00
				" Smoke-house, spring-house, and other buildings - -		50 00
				" Increased value cleared land - - -		364 40
				" Increased value of orchard - - -		247 75
				" Tax and interest, as reported - -		142 64
	- - - - - - - - -	$3,110 88				$3,110 88

F.—Continued.

SAMUEL BUCHANNON, DR.				CONTRA,		CR.
	No. 11.			No. 11.		
1840.	To amount of rent on 64 acres of land, from 1829 to this date inclusive - - -	$1,486 00	1829.	By clearing 56 acres, at $14 60 per acre -		$817 60
	" Int. on same - -	520 00		" Int. on same - -		383 43
		$2,006 00	1810.	" Hewed log house, cost		300 00
	Bal. due for improvements	640 26		" Int. on same - -		342 00
			1816.	" Setting 109 apple trees, 25 cents each - -		27 25
				" Int. on same - -		21 19
				" Increased value of cleared land, as before stated - -		364 40
				" Increased value of orchard - - -		247 75
						$2,503 62
				By am'nt of tax and int.		142 64
		$2,646 26				$2,646 26

December 8th, 1840. THOMAS H. LINCH.

G.

Years - - - - -	1819	1820	1821	1822	1823	1824	1825	1826	1827	1828		1829
Cleared land each year -	12	12	12	12	22	23	23	23	25	25		25
Yearly rent per acre - -	$1 42	$1 42	$1 42	$1 42	$1 42	$1 42	$1 42	$1 42	$1 42	$1 42		$2 00
Gross rent each year - -	17 04	17 04	17 04	17 04	31 24	32 66	32 66	32 66	35 50	35 50	$221 34	50 00
Gross interest each year -	9 18	8 16	7 14	6 12	9 35	7 80	5 85	3 90	2 13		59 73	25 56
Price of clearing per acre	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60	14 60		
Gross price for clearing -	175 20				146 00	14 60			29 20		365 00	
Gross int. for clearing -		94 59				43 80	87			1 75	141 01	

Years - - - - -	1830	1831	1832	1833	1834	1835	1836	1837	1838	1839	1840	
Cleared land each year -	25	25	25	25	25	25	25	25	25	25	25	
Yearly rent per acre - -	$2 00	$2 00	$2 00	$2 00	$2 00	$2 00	$2 00	$2 00	$2 00	$2 00	$2 00	
Gross rent each year - -	50 00	50 00	50 00	50 00	50 00	50 00	50 00	50 00	50 00	50 00	50 00	$600 00
Gross int. each year - -	33 00	30 00	27 00	24 00	21 00	18 00	15 00	12 00	9 00	6 00	3 00	223 56

G.—Continued.

DAVID WOOD,	DR.	CONTRA,	CR.
No. 1.		No. 1.	
1828. To rent on 25 acres of land - - -	$221 34	1828. By clearing 25 acres, at $14 60 - - -	$365 00
" Int. on same - -	59 73	" Int. on same - -	141 01
	$281 07		
Balance due Wood -	224 94		
	$506 01		$506 01
No. 2.		No. 2.	
1840. To rent on 25 acres, since 1828 - - -	$600 00	1840. By balance due as above	$224 94
" Int. on same - -	223 56	" Int. on same - -	161 95
		" Increased value of land	135 00
		" Tax and interest -	73 74
			$595 63
		Balance due Upshaw -	227 93
	$823 56		$823 56
No. 3.		No. 3.	
1840. To rent, since 1828 -	$600 00	1828. By clearing 25 a's, $14 60	$365 00
" Int. on same - -	223 56	" Int. on same - -	141 00
		" Increased val. land -	135 00
		" Tax and Interest -	73 74
			$714 75
		Balance due Upshaw -	108 81
	$823 56		$823 56

December 8th, 1840. THOMAS H. LINCH.

And thereupon, the complainants, by their counsel, filed the following exceptions to the report of the master commissioner, to wit:

Exception.

CIRCUIT COURT U. S., *District of Ohio.*

BUCHANNON and others, *vs.* E. UPSHAW. } Chancery.

The complainants, by their counsel, come and except to the report of the master commissioner, filed in this cause at the present term, for the reasons following:

1st. Complainants are charged therein with rent for all the lands in their possession, (leaving out every fifth year for repairs,) instead of two-thirds thereof, leaving one-third for fallow ground, agreeably to the testimony of Thomas Mullen, A. Fee.

2d. They are charged for rent of buildings and orchards, over and above the rent of the land, which is contrary to the custom of the country, and to the testimony of Mullen, A. Fee, Frazee, Barkley, Wilson, and J. Fee.

3d. They are charged rent for the land occupied by the orchards, which cannot be cultivated, as appears from the testimony of Thos. Mullen and others, and is known to the court.

4th. They are charged with grain rent, instead of cash rent,—whereby due credit has not been given them for preparing and taking grain to market; and the rents have been made too high. See report itself, and testimony.

5th. In charging rent for orchard, they are charged for every year, whereas orchards only bear every other year. See testimony of T. Mullen and A. Fee.

6th. They are allowed but $14 60 for clearing and fencing land per acre, instead of $20 or $23; the excess of $540 is afterwards added to make it $20; but complainants lose the interest on this excess for many years. See report and depositions.

7th. They are allowed only $0 25 per tree for planting orchards, instead of the real value thereof, as proven by the testimony. The court adds the excess *now;* but that deprives the occupants of the interest for a long time, inasmuch as the orchards were as good twenty years ago as now. See depositions of H. Cammerer and H. Cammerer, Jr.

7th. The com'r received and acted upon the testimony taken before J. L. Miner, Esq., the former commissioner.

8th. He has rejected from the calculations the school-house, locust trees, and machine house of Jno. Buchannon, the old house of Fisher, and several other buildings, and has allowed no interest on the wells dug by occupants. See report and estimates, and depositions of Larkin, and others.

9th. He has fixed the rents too high, and the value of the improvements too low. See testimony of Col. Utter, Jacob Fee, Peter Fisher, S. Frazee, and others.

For these and other reasons, upon the face of said report appearing, and to be found in the testimony which accompanies the same, the complts. pray that said report may be corrected, modified, and in part set aside; so as to make it conform to the testimony, and the right and justice of the case.

SWAN, WRIGHT, & HAMER,
for Compl'ts.

Dec. 23d, 1840.

And thereupon the court entered the following decree, to wit:

Decree.

JOHN BUCHANNON, et al., Complainants,
vs.
EDWIN UPSHAW, Respondent.
} In Chancery.

This cause came on to be heard on the master's report, and exceptions thereto, and was argued by counsel; and the court having advised thereon, do overrule the 1st, 3d, 4th, 5th, 6th, 7th, and 9th exceptions filed by complainants' counsel, to the said report; and also the 8th exception, save so much thereof as relates to the court here, which they sustain, and allow the defendant thirty dollars, the value of planting out the same. The court do also sustain the several exceptions, and allow the complainants the present value of the houses, barns, spring-houses, kitchens, and wells, but suffer no interest to be credited, and no rents to be charged therefor: they also allow to the complainants for clearing of land, according to the custom of the country, $14 60 per acre, as shown in the report, and disallowed all further charges for the gradual removing of old trees and stumps from the land, after it was brought into cultivation. They also allow the complainants for the expense of

setting out the orchard, and disallow the charge for the increased growth thereof, arising from the natural growth. Rents to be paid by the occupants from the year 1818, when notice of Upshaw's title was given to the occupants. Improvements to be paid for up to that time, without interest. With these instructions and modifications, the court adopt numbers 1, 2, and 3, of the master's report, as the basis of this decree. And as the value of the rents and profits justly due from each of the said complainants to the defendant exceeds the value of his improvements, it is therefore ordered, adjudged, and decreed, that the injunction heretofore granted by this court in this cause, restraining the defendant, Upshaw, from suing out execution on his judgments at law, in the complainants' bill named, be, and the same is hereby dissolved; and that the said defendant be allowed to sue out his process of execution on said judgments. It is further ordered, adjudged, and decreed, that the said complainants' bill be, and the same is hereby dismissed. And that the complainants pay to the defendant, Upshaw, the costs of this suit, taxed at $737 23, in ninety days, or that execution issue therefor.

And with respect to the sum of two hundred dollars, alleged by the complainants to have been paid by Philip Buckner to John O'Bannon, reserved for further consideration in the decree rendered in this case at the December term, 1839, the said defendant, by his counsel, having withdrawn his objections for the allowance thereof, it is therefore ordered, adjudged, and decreed, that the said sum, with interest thereon from the time of such payment, be allowed to the said complainants, in proportion to the reported value of their several tracts of land, and credited on the sums herein decreed against them; and in order to carry into effect the interlocutory decree, and agreement of the parties at the last term of this court, it is further ordered, adjudged, and decreed, that the complainants respectively pay to the defendant, Upshaw, within five months from the first day of this term, the balance found due against each respectively, for the rents and profits, after deducting therefrom the value of his improvements upon the principals above stated in this decree. That is to say, the said complainant, John Buchannon, the sum of $145 82. The complainant, Andrew Buchannon, $62 09. The complainant, John Cammerer, $979 77. The complainants, John Fisher, Jacob Fisher, David Fisher, Henry Fisher, and Daniel Fisher, $1,538 04. The complainant, John McWilliams, $464 53. The complainant, Samuel Buchannon, $1,243 98. The complainant, David Wood, $328 07. And if default be made in the payment of the said sums of money, or any of them, or any part thereof, then, and in that case, execution shall issue against each and every of said complainants so failing to make payments, as on several judgments at law.

Saturday, January 2d.

JOHN BUCHANNON, et al., Compts.,
vs.
EDWIN UPSHAW, Deft. } In Chancery.

This day came the complainants, by Mr. Wright, their counsel, and prayed an appeal to the Supreme Court of the United States, which is allowed, on the said complainants filing bond and security in the sum of six thousand dollars, to the satisfaction of the clerk of this court. Execution stayed three months, to put in bail to perfect said appeal. Monday, January 4th.

And afterwards, to wit, on the first day of April, anno Domini eighteen hundred and forty-one, the complainants filed with the clerk of said court the following bonds, to perfect their appeal of said case, to wit:

Know all men by these presents, that we, Jacob Fee and Henry Barkley, are held and firmly bound unto Edwin Upshaw, in the sum of six thousand dollars, lawful money; for the payment whereof we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. In testimony whereof, we have hereunto set our hands and seals, this the twenty-sixth day of March, A. D. 1841.

The condition of the above obligation is as follows: Whereas, in a certain suit in chancery, pending in the Circuit Court of the United States, within and for the seventh circuit and district of Ohio, wherein John Cammerer and others were complainants, and the said Edwin Upshaw, defendant, a decree was rendered against the said complainant, from which said decree, the said complainants have obtained the allowance of an appeal to the Supreme Court of the United States:

Now, if the said complainant, John Cammerer, shall pay, discharge, and in all things comply with any decree which the said Supreme Court may make against him in the said cause so appealed, and pay all costs which may be adjudged against him, then the above obligation shall be void, otherwise to be and remain in full force and virtue in law.

JACOB FEE, [L. S.]
HENRY BARKLEY. [L. S.]

Endorsed, "Approved, and filed April 1, 1841.
WM. MINER, *Cl'k.*"

Know all men by these presents, that we, James B. Simmons, Thornton Rush, John A. Simmons, Wm. D. Buchannon, are held and firmly bound unto Edwin Upshaw, in the sum of six thousand dollars, lawful money; for the payment whereof, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. In testimony whereof, we have

hereunto set our hands and seals, this the 23d day of March, A. D. 1841.

The condition of the above obligation is as follows: Whereas, in a certain suit in chancery, pending in the Circuit Court of the United States, within and for the seventh circuit and district of Ohio, wherein Samuel Buchannon and others were complainants, and the said Edwin Upshaw, defendant, a decree was rendered against the said complainants, from which said decree the said complainants have obtained the allowance of an appeal to the Supreme Court of the United States:

Now, if the said complainant, Samuel Buchannon, shall pay, discharge, and in all things comply with any decree which the said Supreme Court may make against him in the said cause so appealed, and pay all costs which may be adjudged against him, then the above obligation shall be void, otherwise to be and remain in full force and virtue in law.

JAMES B. SIMMONS, [L. S.]
THORNTON RUSH, [L. S.]
JOHN A. SIMMONS, [L. S.]
WM. D. BUCHANNON. [L. S.]

Endorsed, "Approved and filed April 1, 1841.
WM. MINER, *Cl'k.*"

Know all men by these presents, that we, Joseph Page, John G. Gilfillen, and Enos L. Fee, are held and firmly bound unto Edwin Upshaw, in the sum of six thousand dollars, lawful money; for the payment whereof, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. In testimony whereof, we have hereunto set our hands and seals, this the 23d day of March, A. D. 1841.

The condition of the above obligation is as follows: Whereas, in a certain suit in chancery, pending in the Circuit Court of the United States, within and for the seventh circuit and district of Ohio, wherein John Buchannon and others were complainants, and the said Edwin Upshaw, defendant, a decree was rendered against the said complainants, from which said decree the said complainants have obtained the allowance of an appeal to the Supreme Court of the United States:

Now, if the said complainant, John Buchannon, shall pay, discharge, and in all things comply with any decree which the said Supreme Court may make against him in the said cause so appealed, and pay all costs which may be adjudged against him, then the above obligation shall be void, otherwise to be and remain in full force and virtue in law.

JOSEPH PAGE, [L. S.]
JNO. G. GILFILLIN, [L. S.]
ENOS L. FEE. [L. S.]

Endorsed, "Approved and filed April 1, 1841.
WM. MINER."

Know all men by these presents, that we, Joseph Barkley, James Barkley, James Buchannon, David Morton, are held and firmly bound unto Edwin Upshaw, in the sum of six thousand dollars, lawful money; for the payment whereof, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. In testimony whereof, we have hereunto set our hands and seals, this the 23d day of March, A. D. 1841.

The condition of the above obligation is as follows: Whereas, in a certain suit in chancery, pending in the Circuit Court of the United States, within and for the seventh circuit and district of Ohio, wherein Andrew Buchan and others were complainants, and the said Edwin Upshaw, defendant, a decree was rendered against the said complainants, from which said decree the said complainants have obtained the allowance of an appeal to the Supreme Court of the United States:

Now, if the said complainant, Andrew Buchannon shall pay, discharge, and in all things comply with any decree which the said Supreme Court may make against him in the said cause so appealed, and pay all costs which may be adjudged against him, then the above obligation shall be void, otherwise to be and remain in full force and virtue in law.

JOSEPH BARKLEY, [L. S.]
JAMES BUCHANNON, [L. S.]
DAVID MORTON. [L. S.]

Endorsed, "Approved and filed April 1, 1841.
WM. MINER, *Cl'k.*"

Know all men by these presents, that we, Allen Woods, J. M. Woods, Joseph Frambes, Matthew Mullen, Joseph Parrish, J. F. McKinney, Samuel Justice, Smith G. Clark, R. M. Sinks, James Ross, H. Raper, E. A. Collins, and others, are held and firmly bound unto Edwin Upshaw, in the sum of six thousand dollars, lawful money; for the payment whereof, we bind ourselves, our heirs, executors and administrators, firmly by these presents, jointly and severally. In testimony whereof, we have hereunto set our hands and seals, this twenty-fourth day of March, A. D. 1841.

The condition of the above obligation is as follows: Whereas, in a certain suit in chancery, pending in the Circuit Court of the United States, within and for the seventh circuit and district of Ohio, wherein Jacob Fisher, John Fisher, Henry Fisher, David Fisher, Daniel Fisher, and others, were complainants, and the said Edwin Upshaw, defendant, a decree was rendered against the said complainants, from which said decree the said complainants have obtained the allowance of an appeal to the Supreme Court of the United States:

Now, if the said complainants, Jacob Fisher, John Fisher, Henry Fisher, David Fisher and Daniel Fisher, shall pay, discharge, and, in all things, comply with any decree which the said Supreme

Court may make against them in the said cause so appealed, and pay all costs which may be adjudged against them, then the above obligation shall be void, otherwise to be and remain in full force and virtue in law.

ALLEN WOODS,	[L. S.]
J. M. WOODS,	[L. S.]
JOSEPH FRAMBES,	[L. S.]
MATHEW MULLEN,	[L. S.]
JOSEPH PARRISH,	[L. S.]
J. F. McKINNEY,	[L. S.]
SAMUEL JUSTICE,	[L. S.]
R. M. SINKS,	[L. S.]
SMITH G. CLARKE,	[L. S.]
JAMES ROSS,	[L. S.]
H. RAPER,	[L. S.]
E. A. COLLINS,	[L. S.]
EDWARD SINKS,	[L. S.]
JOHN SALT,	[L. S.]
W. THOMPSON,	[L. S.]
A. S. B. THOMPSON,	[L. S.]
THOMAS BOUDE,	[L. S.]
JOHN DOULEY,	[L. S.]
JOHN S. TOUTE,	[L. S.]
GEORGE GREGG,	[L. S.]
ANTHONY JONES.	[L. S.]

Endorsed—"Approved and filed April 1, 1841.
WILLIAM MINER, *Cl'k.*"

Know all men by these presents, that we, Allen Woods, J. M. Woods, Joseph Frambes, Mathew Mullen, Joseph Parrish, J. F. McKinney, Samuel Justice, R. M. Sinks, Smith G. Clarke, James Ross, H. Raper, E. A. Collins, Edward Sinks, John Salt and others, are held and firmly bound unto Edwin Upshaw, in the sum of six thousand dollars lawful money, for the payment whereof we bind ourselves, our heirs, executors and administrators, firmly by these presents, jointly and severally. In testimony whereof, we have hereunto set our hands and seals, this the twenty-fourth day of March, A. D. 1841.

The condition of the above obligation is as follows: Whereas, in a certain suit in chancery, pending in the Circuit Court of the United States, within and for the Seventh Circuit and District of Ohio, wherein John McWilliams and others were complainants, and the said Edwin Upshaw, defendant, a decree was rendered against the said complainants, from which said decree the said complainants have obtained the allowance of an appeal to the Supreme Court of the United States: Now, if the said complainant, John McWilliams shall pay, discharge, and in all things comply with any de-

cree which the said Supreme Court may make against him in the said cause, so appealed, and pay all costs which may be adjudged against him, then the above obligation shall be void, otherwise to be and remain in full force and virtue in law.

ALLEN WOODS,	[L. S.]
J. M. WOODS,	[L. S.]
JOSEPH FRAMBES,	[L. S.]
MATHEW MULLIN,	[L. S.]
JOSEPH PARRISH,	[L. S.]
J. F. McKINNEY,	[L. S.]
SAMUEL JUSTICE,	[L. S.]
SMITH G. CLARKE,	[L. S.]
R. M. SINKS,	[L. S.]
JAMES ROSS,	[L. S.]
H. RAPER,	[L. S.]
E. A. COLLINS,	[L. S.]
EDWARD SINKS,	[L. S.]
JOHN SALT,	[L. S.]
W. THOMPSON,	[L. S.]
A. S. B. THOMPSON,	[L. S.]
THOMAS BOUDE,	[L. S.]
JOHN DOULEY,	[L. S.]
JOHN S. TOUT,	[L. S.]
GEORGE GREGG,	[L. S.]
ANTHONY JONES.	[L. S.]

Endorsed—"Approved and filed April 1, 1841.
WM. MINER, *Cl'k.*"

Know all men by these presents, that we, James Bennet and Joseph Wood, are held and firmly bound unto Edwin Upshaw in the sum of six thousand dollars, lawful money, for the payment whereof we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. In testimony whereof, we have hereunto set our hands and seals, this the twenty-sixth day of March, A. D. 1841.

The condition of the above obligation is as follows: Whereas, in a certain suit in chancery, pending in the Circuit Court of the United States, within and for the Seventh Circuit and District of Ohio, wherein David Wood and others were complainants, and the said Edwin Upshaw, defendant, a decree was rendered against the said complainants, from which said decree the said complainants have obtained the allowance of an appeal to the Supreme Court of the United States:

Now, if the said complainant, David Wood, shall pay, discharge, and, in all things, comply with any decree which the said Supreme Court may make against him in the said cause so appealed, and pay all costs which may be adjudged against him, then the above obli-

gation shall be void, otherwise to be and remain in full force and virtue in law.

JAMES BENNETT, [L. S.]
JOSEPH WOOD. [L. S.]

Endorsed—"Approved and filed April 1, 1841.
WM. MINER, *Cl'k.*"

THE UNITED STATES OF AMERICA,
District of Ohio, ss.

I, William Miner, Clerk of the Circuit Court of the United States, within and for the Seventh Circuit and District of Ohio, do certify, that the foregoing is truly taken and copied from the records of the proceedings of the Circuit Court of the United States, within and for the Seventh Circuit and District of Ohio.

In testimony whereof, I do hereto subscribe my name, and affix the seal of said Court, this 26th day of May, anno Domini one thousand eight hundred and forty-one, and of the American Independence the sixty-fifth.

[L. S.]

Attest: WM. MINER, *Clerk.*

Clerk's fee, transcript, &c. on appeal, $194 50-100. (Paid by complainants.)

OHIO, *December Term*, 1839.

BUCHANNON and others,
vs.
UPSHAW.

A subsequent ratification of a contract, entered into by a person, without authority, relates back, and covers the whole transaction.

An order to receive money when collected in a due course of law, imposes no active diligence on the holder.

A purchaser who delays payment, and when prosecuted for the money, resorts to technical grounds of defence, cannot be entitled to the specific execution of his contract.

The vendor who holds only an equity, though he sell and convey by deed, can convey no better title than he possesses.

Every purchaser is bound to look to the title he purchases.

The second purchaser of an equity, for which the consideration has never been paid, cannot entitle himself to a conveyance without paying, and that in reasonable time, the original consideration.

When he delays and refuses to pay it, and defends the possession of the land, against the original vendor, who holds the title, he cannot call upon a court of equity afterwards to aid him. In determining what effect shall be given to lapse of time, the residence of the parties, and all the circumstances of the case will be considered.

Under a general prayer for relief, the value of improvements may be decreed.

Messrs. Wright and Swan appeared for the complainants, and Messrs. Scott and Ewing for defendants.

Opinion of the Court.

On the 11th Dec., 1789, Beverly Roy obtained from the Commonwealth of Virginia, a patent for 1,000 acres of land, in the Virginia military district of Ohio, and within Clermont county. He sold 300 hundred acres of this tract to one Buchannon, and contracted to convey the remaining 700 to Lyne Shackleford. Shackleford, the 10th of April, 1797, sold this tract, and also a tract of 1,000 acres, lying on Poag's creek in the State of Kentucky, to Upshaw, the deft. At the request of Shackleford, Roy executed a conveyance to Upshaw, for the 700 acres, the 20th July, 1797, and also a bond for further assurance.

On the 16th Nov., 1797, Shackleford being the owner in equity of 1,000 acres of land, No. 1080, in Clermont County, for the consideration of £1,020, contracted to convey to Philip Buckner, of Kentucky, the 1,000 acres last named, and also the 700 acres sold to Upshaw. The consideration to be paid by the assignment of a bond on Richard C. Anderson, for £673 6 2, payable the 1st of January,

ensuing. £73 6 2, of this bond to be repaid to Buckner; and Buckner to give an order to Shackleford for the proceeds of a bond on one Coatts, then in suit, in the Federal Court at Richmond, Virginia, on which the sum of £250 was due. The order was to be on the attorney who prosecuted the suit; and if the money could not be collected, Buckner was to pay it. And for the residue of the consideration, Shackleford agreed to wait until Buckner shall have sold both tracts, provided such sale shall be made before the 1st January, 1799; at which time Buckner was to make full payment; and Shackleford covenanted to convey, or cause to be conveyed, the land thus sold.

On the day of this contract, Shackleford repaid to Buckner the £73 6 2, and Buckner assigned to him Anderson's bond, and gave an order on Charles Copland for the amount to be recovered on Coatts' bond.

Upshaw having made certain payments on his contract with Shackleford for the two tracts of land, on the 18th April, 1801, they entered into a new contract, which was endorsed on the original one, and which stated; "that since the date of the within, Shackleford had, with the consent of Upshaw, sold the 700 acres of land to Buckner, for £420, which sum is still due;" and it was agreed that Shackleford should assign Buckner's contract to Upshaw, who should make a deed so soon as the money should be paid.

A judgment was obtained on Coatts' bond, which was variously prosecuted against Coatts, in his life time, and his heirs after his decease; but no part of the bond could be collected. The order on Copland for this judgment was assigned by Shackleford to Major William Chamberline.

Shackleford assigned Buckner's contract to Upshaw, the 16th May, 1803, specially authorising him to receive the balance due, which at that date, amounted to the sum of £530 9.

About this time Shackleford delivered to Upshaw the order on Copland, and a deed to Buckner, for the 1,000 acres of land, to be delivered to him, which was done.

The 10th April, 1804, Upshaw empowered John H. Upshaw, who was going to Kentucky, to receive from Buckner the sum due on his contract. And on the payment of the money, the agent was authorised to make a deed.

The agent called on Buckner, who expressed much anxiety to comply with his contract, and induced the agent to remain some days, in the hope of raising the money. But he failed to pay any part of it. The agent, after authorising John O'Bannon to receive the money from Buckner, and make him a deed, returned to Virginia.

Upshaw drew an order on O'Bannon, the 1st April, 1807, for the money, which was returned protested for non acceptance. O'Bannon shortly after this died, and in the year 1813 or 1814, Upshaw

obtained from his representatives the assigned contract of Buckner, which had been left with him, and on which was endorsed a credit for $100, the 10th April, 1805, and another for the same amount, 18th April, 1806.

On obtaining the contract, Upshaw caused an action to be brought on it against Buckner for the money. The suit being brought in the name of Upshaw, as assignee of Shackleford, there was a demurrer to the declaration; and at May term, 1815, the circuit court of the United States, for Kentucky, sustained the demurrer, and the action failed.

Shortly after this, Upshaw commenced an action of ejectment in this court, against the complainants, to recover possession of the land, which, at May term, 1815, failed, on the ground, that the patent emanated from the State of Virginia, subsequently to the deed of cession; and Upshaw was only invested with the equitable title to the land.

The 24th August, 1817, Roy and wife executed another deed to Upshaw for the land; and he obtained a patent from the United States for it, the 24th October, 1826.

Another action of ejectment was brought by Upshaw, in this court, against the complainants, in which he obtained a judgment for the land; and it is to enjoin this judgment that this suit in chancery is brought.

The complainants represent that in 1798 Buckner made a contract with Alexander Buchannon, father of the complainants, John and Andrew Buchannon, for 200 acres of the land; possession was delivered and a deed executed, 31 Jan'y, 1801.

That in 1803 Alexander Buchannon died, having devised the land to his sons, John and Andrew.

In 1801 Buckner sold 108 acres of the land, received the consideration, and made a deed to James Buchannon. In 1799, 150 acres were sold to John Conner, a deed for which was made in 1801. And the residue of the tract was sold and conveyed in 1799 to the complainants, or to those under whom they claim.

The complainants state that they have occupied the land since it was purchased, paid the taxes, and made valuable improvements on it; and they pray that Upshaw may be enjoined from proceeding on his judgment, and that he be decreed to relinquish his title to them.

In behalf of the defendant, it is objected that the important allegation in the bill, that Shackleford was authorised to sell the land to Buckner, is wholly unsupported by the evidence. And that in any view there was a want of mutuality in the contract.

The subsequent ratification of the contract by Upshaw, covered the whole transaction. It gave the same effect to it, as if the power had preceded the sale. The contract was before him; he was acquainted with its conditions, and he declares it was made with his assent. Story on Agency, 234, 5, 239.

Where is the want of mutuality in this contract?

After its ratification, is it not binding on Buckner, and also on Upshaw? He could not sue Buckner at law, in his own name, for the money; but the assignment gave him a right to sue in the name of his assignor. And could not Buckner, on the payment of the consideration, call upon Upshaw, in a court of chancery, for a conveyance? The assignment on the contract annexes no new condition; and if in the agreement between Upshaw and Shackleford, indorsed on another contract, any new condition is annexed, it is not binding on Buckner. He stands on his contract with Shackleford, and this contract Upshaw declares was made with his assent; he is bound by it.

Both Upshaw and Buckner treat this contract as obligatory on them. And in doing so they have considered it according to its legal and equitable effect.

The facts of the case, and the arguments of the complainants' counsel, may be considered under two heads.

1. It is contended that Buckner, in selling the land, acted as the agent of the defendant, and that the purchasers are in no respect answerable for his laches.

2. The gross negligence of the defendant, and lapse of time.

The argument under the head of Buckner's agency, has great plausibility. Indeed, if the fact assumed be true, it is unanswerable.

If Buckner, in making the sale of this land, can be considered as the agent of Upshaw, there is an end to the controversy. A payment to the agent is a payment to the principal, and no misapplication of the fund, by the agent, can affect the rights of the purchasers.

But did Buckner act as the agent of the defendant? What proof is there of his agency? Is it found in his contract? If it be not there it is no where.

The counsel profess to find it in that part of the contract where Shackleford agrees to wait for the residue of the consideration until Buckner shall sell the 1,700 acres of land, provided such sale shall be made before the 1st January, 1799.

And does this constitute an agency? For whose benefit does Buckner make the sale? If he sell at a very high price, who realizes the advance? Does he use his own name in the contract, or the name of Upshaw? He uses his own, and sells on his own account and for his own advantage.

It would indeed constitute a new head of equity—if A sell a tract of land to B, and agree to wait for the payment of the consideration, until B shall sell the land—to hold that the purchaser from B, having paid him, may call upon A for a conveyance, who has received no part of the consideration.

Buckner looked to a sale of the land as a means of enabling him to pay for it. And Upshaw agrees to defer the payment a reason-

able time, on this ground. But there is no power given to sell, beyond that which arises from the mere contract of purchase, and which is common to every purchaser.

Buckner was the holder of the equitable title, and he had a right to sell it; but could he convey no greater right than he possessed. The holder of the legal title may, under certain circumstances, convey to an innocent purchaser, without notice, a good title, whilst his own is essentially defective. But this cannot be done by one who holds only the equitable title. In such a case the doctrine of notice does not apply.

Whatever may be the form of a conveyance, the purchaser of an equitable title takes it subject to all equities. The title in his hands is no stronger nor better than it was in the hands of his vendor.

Has Upshaw or his assignor been guilty of such gross negligence, as to bar all redress?

It is insisted in the first place, that the order on Copland for the sum of money to be collected from Coatts, was so neglected by Shackleford and the defendant, as to make the defendant justly answerable for the amount.

Whether the order was given on the attorney who managed the suit, or not, is a matter of little or no importance. The order at least showed the right to receive the money on the bond, when collected.

What diligence did this order impose on the holder? He was authorised to receive the money when collected; and this was the extent of his authority. Until the money was collected, he had nothing to do. He was not responsible, in any view, for the faithful prosecution of the suit. His active duties commenced when the money came into the hands of the marshal or the attorney; and if, after this event, he failed to obtain the money, by a want of diligence, the loss was his own.

If, indeed, he improperly interfered in the management of the suit, and such interference was the means of defeating the collection of the money, he was answerable for it. But this must be shown by proof. There is no pretence that there was such an interference; the only ground of complaint is, that he was passive and did not use any diligence.

The suit against Coatts was not only prosecuted to final judgment, but after his decease an ineffectual attempt was made to collect the money from his representatives. The proceeding was tardy, but not more so, probably, than the ordinary progress of cases in the Virginia courts.

The holder of the order was guilty of no laches. When the order was returned to Buckner, in 1804, he expressed no dissatisfaction. The facts were then fresh in his mind, and so far from urging negligence in not collecting this money, he shows great anxiety to pay

it himself, as he had contracted to do. Making Buckner, then, a judge in his own case, he leaves no ground, in this particular, on which the arguments of the counsel can rest.

But the sale of the 1,000 acres and the 700 acres, by Shackleford, was in gross; and it is contended that the payments must be applied to both tracts as though they were one. And a strong intimation is thrown out, that Upshaw acted fraudulently in procuring the deed for the thousand acres tract, and attempting to throw the balance due on the 700 acres.

The facts do not warrant such an intimation. Upshaw had no interest in the 1,000 acres conveyed to Buckner; this tract was the land of Shackleford, and having received the consideration, he caused a deed for it to be executed. Upshaw was a mere instrument in handing to Buckner this conveyance.

It is admitted, that some difficulty might have existed, as to the consideration of the sale of the 700 acres, if the parties to the contract by their own acts had not obviated it; the price might have been graduated on the two tracts, in proportion to the number of acres in each; but we are saved even this calculation. Shackleford, in his contract with Upshaw, states the consideration of the 700 acres tract; and this, in effect, is assented to by Buckner when he promised payment.

Shackleford, in conveying the 1,000 acres tract, evinces a disposition to withhold nothing from Buckner, which, in justice, he has a right to demand. And had the same disposition influenced the conduct of Buckner, this controversy could not have arisen. There is nothing in this part of the transaction which casts a shade upon the conduct of the defendant. Has he been grossly negligent in the prosecution of his claim against Buckner? In considering this question, the local situation of the parties must be regarded.

The contract was entered into in 1797; it was assigned to Upshaw in 1803; both Shackleford and Upshaw resided in Virginia; Buckner in Kentucky. At the early period of the contract, there was, comparatively, but little intercourse between Virginia and Kentucky—this is matter of history. The facilities for travelling were limited, and a journey of five hundred miles was not readily undertaken, nor easily accomplished.

Under the contract, the amount of Coatts' bond could not be demanded of Buckner, until a legal course of measures had been tried. And yet, under all these circumstances, we find the agent of Upshaw, in 1804, in Kentucky, endeavouring to obtain payment from Buckner. At this time there was due on the contract, the sum of £530 9, which was the whole consideration for the 700 acres tract, including interest. Buckner failed to pay any part of the money, and the agent gave a power to O'Bannon to collect it. He seems to have made something like a continual claim, for a credit of $100 is entered in each of the two succeeding years.

O'Bannon died, and it appears when the agent of Upshaw ob-

tained the papers from his representatives, suit was brought against Buckner. He availed himself of a technical defence, and at May term, 1815, obtained a non-suit. Defeated in all his attempts to obtain the money from Buckner, in 1818 the defendant brought an ejectment to recover possession of the land. The complainants successfully resisted this effort. And for the first time, on the trial of the ejectment, it was discovered that the patent from the Governor of Virginia did not convey the legal title. Upshaw, however, had the clear equitable title ; and in 1826, he obtained a patent from the United States. Suit being again brought, in 1829, for the possession under this title, the defendant succeeded in obtaining a judgment.

Does this history of facts show such gross negligence on the part of the defendant, in the prosecution of his rights, as should bar him from all legal recourse? It would not have been extraordinary, if, under the discouraging circumstances detailed, he had abandoned his rights. A man of less pertinacity would have done so. The conflict was long and disastrous to the defendant, but he persevered in the assertion of his claim, first for the consideration, and failing in this, for the land. His case is stronger than the case of Coulson vs. Walton, et al., Peters, 62, where the court held the complainant was not barred by negligence and lapse of time. The history of that case bears a strong analogy to this.

But what constitutes the merits of the complainant's claim; a claim on which they ask a decree of the title from the defendant?

They bought their lands of Buckner, who held a mere contract for the title, never having paid the purchase money. As prudent men, they may be presumed to have done what they were bound to do, in regard to Buckner's title. They were bound to enquire into it. If they neglected to do this, they must suffer the consequences of such negligence. The only evidence of title which Buckner could show, would also show that the consideration was not paid.

In their bill the complainants expressly refer to the contract with Shackleford, as authorizing Buckner to sell; so that by their own showing, they were acquainted with the nature of Buckner's title.

It is insisted, that by this contract, Upshaw was bound to convey in a reasonable time, inasmuch as the payment of the money was not made a condition precedent to the conveyance.

No Court of Chancery, under the circumstances of this case, would have decreed a conveyance before 1799, when the last payment was due, without requiring ample security for the purchase money; nor after that, except on the payment of it. The purchasers entered into the possession, paid for their land, and obtained conveyances from Buckner. They have made valuable improvements, and have occupied them nearly forty years. But they have done more than this. For twenty years they have resisted the claim of the defendant. Like their vendor, they have sheltered themselves under the

technicalities of the law. They forced the defendant from all his positions; and it was not until he perfected his title by procuring a patent from the United States, that he was able to enforce his legal rights. And now, in the last stage of the conflict, the position is assumed by the complainants, that they are entitled to a decree for a conveyance of the title of the defendant, on the ground of his gross negligence in the enforcement of his rights and the lapse of time. Whatever other position the defendant may have occupied, he cannot be said to have slept upon his rights. He has been wide awake, though his steps have not, at all times, been judiciously taken.

Chancery will often refuse to give relief on the ground of lapse of time. This is a rule of equity, not wholly dependant on the statute of limitations, but it is often influenced by it.

It applies to a title which has been permitted to lie dormant, whilst the occupant of the land has improved it and enjoyed it as his own. The rule, it seems to me, cannot apply in the present case. The lengthened contest and successful resistance of a title on technical ground, does not weaken such title, nor constitute a bar by mere lapse of time. 1 Schoales and Lefroy, 431. The complainants, at least from 1818, had not only knowledge of the defendant's claim, but the strongest evidence of his disposition to enforce it. And this would give them but eighteen or nineteen years on which to rely as a bar by lapse of time—and this, too, on a purchase of an equity from their vendor, who had not strengthened it by the payment of the purchase money. This period does not constitute a bar under the statute.

Under all the circumstances of this case, can lapse of time not only protect the complainants in their possession, but afford ground on which to decree a divestiture of the defendant's title.

Had he resided in the neighborhood and witnessed the possession and claim of the complainants, their case would have been strengthened. Then, indeed, an acquiescence on his part might be inferred. But he resided about five hundred miles from the land, and it does not appear that he had any knowledge of the possession of the complainants, until a short time before he brought an ejectment against them. There was then no such acquiescence in the possession of the complainants, as should bar the defendants by the lapse of time. His laches have in no respect operated to their injury. Indeed, they have profited by his want of the legal title, in resisting his claim, and holding possession of the land.

Neither they nor their vendor, with the exception of the two hundred dollars paid to O'Bannon, by the latter, have taken any step to pay the purchase money. The claim for this has been uniformly resisted; and it is now too late to ask the benefit of this contract, which has been so long repudiated.

To entitle a vendee or his assignees to the specific execution of a contract, some disposition must be evinced to comply with it. The

consideration must be paid when the money becomes due, or in a reasonable time afterwards; and before the circumstances of the vendor, and the value of the property became materially changed; or the delay of payment must be excused by a defect of title in the vendor.

Upshaw acted in good faith, in selling the land, and believed he was able to make a legal title. He was mistaken in this, but his equity was indisputable; and the want of the legal title could not have been injurious to the purchasers. Neither Buckner nor the complainants allege this as an excuse for not paying the consideration.

The complainants may be entitled to compensation for their improvements, under the statute. This is not one of the objects of their bill, but it may be considered as embraced under the general prayer for relief.

An order may be drawn up, referring this subject to a master, with direction to report at the next term. And until this return shall be made, the question as to the two payments of one hundred dollars each, made to O'Bannon, is reserved.

SUPREME COURT OF THE UNITED STATES.

No. 24.

BUCHANNON & AL. VS. UPSHAW.

ON APPEAL FROM THE CIRCUIT COURT U. S. FOR THE DISTRICT OF OHIO.

Opinion of Circuit Court.

This bill was filed to injoin proceedings on certain judgments in ejectment, obtained by the defendant against the complainants, on the ground of certain equities stated in their bill. A decree against the title set up by the complainants was entered, December term, 1839. But as it appeared from the bill and evidence, that large and valuable improvements had been made on the land, under the general prayer for relief, the court appointed a commissioner to examine, hear testimony, and report as to the improvements, rents, &c., who made his report at the last July term. And the parties by their counsel agreed to set aside the report thus made, except as to the sum paid for taxes on the lands by the complainants. That another commissioner should be appointed, who should report, &c., and if the balance should be found in favor of the rents, after deducting therefrom pay for the improvements, it was agreed that the court should decree in favor of the defendant for the same.

And it was ordered that the commissioner should ascertain the value of all lasting and valuable improvements made upon the land in controversy, by the complainants respectively, and adding thereto interest at the rate of six per cent. per annum until the first day of next term of this court; stating specifically the quality and date of making the improvements. That he shall ascertain the rents and profits, and interest thereon; and also, whether the land has been deteriorated by improper husbandry, or the destruction of timber. That he should make certain rests or periods in his estimate. And power was given him to summon and examine witnesses, employ a surveyor, &c.

And the commissioner having reported on all the matters referred to him, a motion is made by the complainants' counsel to set aside and reject the report, on the ground that the case does not come within the provisions of the statute, which allows compensation for improvements.

That the case is not strictly within the statute, must be admitted. Its provisions apply where the plaintiff recovers by virtue of an adverse and better title, and in this case the titles cannot be held to be adverse. The complainants, who are defendants in the eject-

ment, claim under Upshaw; and although they have deeds from Buckner, not having the legal title, he could convey only an equity. And by the decree of the court, under the circumstances, no effect can now be given to this equity.

The question, therefore, as to the rights of the respective parties, growing out of the occupancy and improvement of the land, must be considered on the broad principles of equity.

In every case which comes within the statute, it must fix the rule of compensation for improvements; but it does not follow that a court of chancery can in no other case make an allowance for them.

By the civil law, any bona fide possessor who had laid out money for substantially improving an estate, was entitled to compensation for such meliorations. Domat states it as a general principle, that those who expend money in making valuable improvements on an estate, have a privilege upon those improvements, as upon a purchase with their own money. 1 Domat, B. 3, tit. 1, sec. 5, art. 7. And this principle seems to have been adopted, with great propriety and justice, by the court of appeals of Kentucky. A bona fide possessor is entitled to an allowance for all necessary, lasting, and valuable improvements made by himself or a stranger, on the premises, to the time of eviction, deducting rents and deterioration of soil. Pr. Dec. 397. Whitledge v. Waits' heirs, 2 Bibb. 45; 3 Marsh. 202. Parker, &c. v. Stephens. But if the possession be mala fide, no allowance will be made. 2 Bibb. 44, Patrick v. Marshall.

A possessor of land without title, but believing it bona fide to be his own, is, by the general principles of equity, entitled to compensation for meliorations. 1 Marsh. 246, Barlow v. Bell; Scraggs v. Taylor, 247.

Where possession of the occupant is bona fide, an allowance for improvements exceeding the rents may be made. Ewing's heirs v. Handley's ex'rs, 4 Lit. Rep. 371.

This rule is of immense importance where the title to land, as in the State of Kentucky, and within the Virginia military district in Ohio, is somewhat precarious. And by reason of this uncertainty, this rule, of necessity, has been more fully considered in Kentucky than in other States.

By the civil law the occupant was not entitled to the cost of the improvements, but to the amount which they had enhanced the value of the land. But the courts of Kentucky seem not to have followed, strictly, either the civil or the common law on this subject. They have acted upon general principles of equity, which, without some reason for exception, entitled the occupant to the value of his improvements at the time of making them. But if he had no notice of the complainants' title, or if the assertion of that title had been fraudulently or negligently postponed, rents would only be computed from the time of filing the bill.—1 Mad. chap. 73-4. Dormer v. Fortescue. 3 Ath. 130. And in such case the

real value of the improvements, though they exceed the rents, should be awarded.

Where an individual has acted in good faith, by expending his money and labor in improving the land of another, believing it to be his own, on the broad principles of natural justice he is entitled to compensation. This is not upon the ground that one individual may make another a debtor against his will; but on the ground of mistake in the occupant, and a benefit conferred with the presumed acquiescence of the owner of the land. So strongly is this principle sanctioned by the occupying claimant law of this State, that where judgment of eviction is given against the occupant, if the improvements exceed the value of the rents, until compensation be made, he cannot be turned out of possession. And this rule applies in all cases where a recovery is had against the occupant by virtue of an adverse and better title.

The case under consideration, though not technically embraced by the statute, is as much within its spirit as any case can be. The complainants, in entering upon the land, acted in good faith. They made valuable and lasting improvements on it, believing it to be their own. And they have continued thus to occupy it for forty years.

In the case of Green v. Biddle, 8 Wheat., Rep. 1, the court held that, if the plaintiff seeks from an innocent person an account of the rents and profits of an estate, on which the latter has made improvements, without notice of any defect in his title, a court of equity, in decreeing an account, will allow him to deduct or recoup therefrom a due compensation for his improvements. And in 1 Story's Eq. 109 it is laid down, that courts of equity have confined themselves to the administration of the equity in cases where their aid has been invoked by the true owner in support of his equitable claims. They have never enforced, in a direct suit by the bona fide possessor, his claim to meliorations of the property from which he has been evicted by the true owner. And to this effect is the decision of the court in the case of Putnam v. Ritchie, 6 Paige, 390.

But a rule different from this has been adopted by the occupying claimant laws of Ohio, Kentucky, and many of the other western States; and also by the courts of Kentucky, on general principles of equity. No good reason is perceived for limiting the compensation for improvements to the amount of rents. It is said that an allowance for improvements is made in equity, where the interposition of the court is asked by the rightful owner. That the court will compel a party to do equity who asks equity, and that on this ground only will the court decree compensation for meliorations.

Without undertaking to say that, under this rule of compelling a party to do equity who invokes it, relief may not be given in some particular cases, where such relief could be brought under no specific head of equity, I cannot but doubt the propriety and justice of thus limiting compensation for improvements.

If the occupant is entitled to compensation for his improvements, as an offset against the rents demanded of him, why is he not entitled to compensation beyond the rents? The improvements must have been made in good faith, and be such as are lasting and valuable; then why should they not be paid for in rents or in money, as circumstances shall require. That the rents are recoverable by the true owner, no one will deny; and in point of principle it is difficult to distinguish, as regards compensation for improvements, between the sum thus to be recovered and any similar amount of money which belongs to the party. But the decision of this case does in no respect depend upon the soundness of this reasoning.

The complainants filed their bill to enjoin the judgment at law, and set up an equitable title, and certain matters which should bar the legal title of the defendant. And they also inserted a prayer for general relief.

In addition to this, it was agreed by the parties that the whole matter, as regards the improvements and rents, should be examined and decided by the court, and a decree rendered as the balance should be found. This is not a case, therefore, where the bona fide possessors ask compensation for their improvements only. They assert an equitable title to the land, and pray for general relief. And in the present aspect of the case, it is prosecuted as well by the defendant for his rents, as by the complainants for their improvements. We consider the case, in both these aspects, as coming within the equity of the occupying claimant law, and clearly within the general principles of equity. Effect may be given to this statute as well in equity as at law. The modes of proceeding are different, but the result is the same.

The court therefore overrule the motion to reject the report, on the ground that the case does not come technically within the occupying claimant law.

And the counsel for the complainant filed the following exceptions to the report:

1. Complainants are charged therein with rent for all the lands in their possession, leaving out every fifth year for repairs; instead of two-thirds thereof, leaving one-third for fallow ground, agreeably to the usages of the country as established by the testimony.

There is no such usage established by the testimony as is supposed in this exception. The reservation of one-third of the cleared land annually, as fallow, may be, under certain circumstances, the most judicious mode of tillage, and is practised by some individuals, as appears from the testimony; but it does not seem now to prevail so as to establish a general usage; and much less can it be supposed to have prevailed, when the country was newly improved and the land fresh. In the first settlement of the country the custom is known to have been uniform, to cultivate every acre of cleared ground. The soil was so rich as to require no renovation, either by the application of manure, or suffering it to remain as fallow.

2d and 3d Exceptions.—The complainants are charged for rent of buildings and orchards, over and above the rent of the land; which is contrary to the custom of the country.

So far as the commissioner has charged rent for the buildings, this exception is well taken. It does not appear, from the testimony, to be the custom of the country to charge rent for the buildings in addition to rent for the farm. The conveniency of the buildings may make the farm more or less desirable to the tenant; but the improvements are all included in the general average rent for the tillable land.

But this rule does not apply to the orchard. Fruit trees when young constitute little or no obstruction to the cultivation of the ground, and rent for it, some years after the trees were planted, has been very properly charged by the commissioner. And after the trees begun to bear, a reasonable rent is charged for the orchard. This seems to be just, and is not proved to be contrary to the custom of the country. It would be a most extraordinary and unreasonable custom, not to allow rent for an orchard of bearing fruit trees.

The objection that fruit trees require the attention and labor of the tenant in trimming them, &c., is answered by the allowance of the commissioner of every fifth year's rent for repairs. This would seem to be a reasonable compensation for keeping the orchard, as well as the other grounds, in a state of repair.

4th Exception.—The complainants are charged with grain rent instead of cash rent, whereby due credit has not been given them for preparing and taking grain to market, and the rents have been estimated too high.

From the report of the commissioner and the evidence, it seems that, at the time the occupancy of this land commenced, and for many years afterwards, there was no such thing known in that part of the country as cash rent being paid for land. Rents were paid in a part of the product of the soil, and the computation of the commissioner has been made upon this principle. He has not estimated what the produce would be worth at the market, but on the farm; and it would seem that he could not have adopted a more appropriate and just rule. In this mode the rent is estimated at a little more than one dollar per acre for the ground cultivated up to the year 1818, and at less than two dollars per acre subsequently to that time; making a general average of about one dollar and fifty cents per acre. During some part of this period, it is known that land in the country generally rented for three, four, and sometimes five dollars per acre. The estimate of the commissioner, therefore, seems to be reasonable, and not liable to the above objection.

5th Exception.—In charging the complainants rent for the orchard every year, while it appears from the evidence that it bears only every alternate year.

The evidence is not clear and satisfactory on this point. It is known that some orchards in the same neighborhood bear every year

whilst others bear only alternate years. But this must depend upon the state of the seasons, and on so uncertain data the court do not feel authorized to set aside the judgment of the commissioner. It is very probable that a part of the time the orchards did not bear, but, with the deduction of every fifth year for repairs, and the use of the orchard grounds for pasturage, we are unable to say that the rent charged should be reduced.

6th Exception.—The complainants are allowed but $14 60 for clearing and fencing land per acre, instead of 20 or 23 dollars.

The higher estimates are here made for cutting down and removing all the timber from the ground. This is not the mode of improving a new country. The under growth and smaller trees are removed, and the larger trees are gradually used as they are wanted for fire-wood and rail timber. This is according to the custom of the country, and in the course of twenty-five or thirty years the trees are generally removed from the cultivated land. But the land is susceptible of profitable cultivation, on the removal of the small growths, as above stated; and as the gradual removal of the larger trees for rail timber and fire-wood is a great convenience to the tenant, he is entitled to no compensation, except that which has been allowed by the commissioner in this case, for keeping the farm in repair. Fourteen dollars and sixty cents appear to be a reasonable allowance for clearing and fencing land, according to the custom of the country.

7th Exception.—The complainants are allowed only twenty-five cents per tree for planting orchards, instead of the real value of the trees, as proved by the testimony.

The commissioner estimated the value of each tree, and the labor of planting it; and this, it is conceived, is the true estimate. By the productiveness of the soil, and the care of the tenant, the value of the trees is greatly increased. For this care the tenant is compensated, in the report of the commissioner, by an exemption from rent every fifth year; and the increased value arising from the productiveness of the soil cannot be claimed by the tenant, but belongs to the owner of the land. As well might the tenant charge his landlord for the general growth, and consequently increased value of timber trees on the farm, which he had in some degree protected, as for the increased value of fruit or other trees which he may have planted.

8th Exception.—The commissioner received and acted upon the testimony taken before the former commissioner.

This exception cannot be sustained. Had the attention of the court been called to the subject, they would have directed the second commissioner to receive the testimony taken before the first one. The testimony was taken by a competent person, in the same case, and in the presence of the parties; it was, therefore, properly received by the second commissioner.

9th Exception.—The commissioner has rejected from the calculation the school-house, locust trees, and machine-house of John Bu-

channon; the old house of Fisher, and several other buildings; and has allowed no interest on the wells dug by occupants.

The school-house, it appears, was built by the contributions of the people of the neighborhood, for a public school; and not by the labor or money of the tenants. In common with others, they may have aided in the construction of this building, but for this no allowance can be made. In the first place, what amount of labor or money was contributed by the tenants does not appear by the evidence; and if it did, from the nature of the improvement and the circumstances under which it was made, no compensation for it could be allowed.

For planting the locust trees a proper allowance should be made. It is said that such improvements as tend to beautify, and are properly denominated matters of taste, do not constitute a charge against the owner of the land. But it is conceived that every improvement which enhances the value of the land should be paid for. The locust trees, both on account of their refreshing shade and their value as timber, come within this rule. The allowance will be for the value of the trees when planted, and the labor of planting them. The other buildings referred to in this exception seem to be of no value, and consequently no allowance should be made for them.

10*th Exception.*—The commissioner has fixed the rents too high, and the value of the improvements too low.

This general exception has already been substantially considered and decided.

As no rent is to be charged the tenants for their buildings, wells, &c., which contributed only to their convenience and comfort, and were in no point of view productive, the tenants should not be allowed interest on the value of these improvements. Their present value must be estimated, and an allowance made accordingly.

The complainants entered upon the possession of the land about the year 1800. A part of them took possession one or two years prior to this time, and some one or two of them the year following. And the question is, from what time the complainants shall be held liable to pay rent.

Under the direction of the court, the commissioner estimated the annual improvements and rents from the year 1800 to the year 1818; from that time to the year 1829; and from that period to the year 1840.

The value of the annual improvements made within each of these periods was estimated by the commissioner, which, together with the interest thereon, was set down at the close of the period. The aunual rents for the same period were also estimated by him, and the amount, together with the interest thereon, set down. These amounts were deducted, the one from the other, at the above dates, and the balance was carried over to the ensuing period.

On the broad principles of equity, it would seem, if the complainants should receive compensation for their annual improvements,